

1 COUNTY COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU : CRIMINAL PART XII

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

Indictment No.  
1456N-2000

6 PAUL SCRIMO,

7 Defendant.

8 -----X  
9 Mineola, New York  
May 10, 2002

10  
11 B E F O R E: HONORABLE JEFFREY S. BROWN  
12 County Court Judge

13  
14 A P P E A R A N C E S:

15 HON. DENIS DILLON  
16 District Attorney of Nassau County  
BY: ROBERT BIANCAVILLA, ESQ.  
17 Assistant District Attorney for the People

18 JOHN CHAMBERLAIN, ESQ.  
19 Attorney for Defendant  
1001 Franklin Avenue  
20 Garden City, NY 11530

21  
22 M I N U T E S O F T R I A L

23  
24  
25 Edward Dong  
Official Court Reporter

1 THE CLERK: Case on trial continued, Indictment  
2 number 1456N of 2000, People of the State of New York  
3 versus Paul Scrimo. All parties are present. Jurors  
4 are not present at this time. Are the People ready?

5 MR. BIANCAVILLA: Ready.

6 THE CLERK: Defense ready?

7 MR. CHAMBERLAIN: Defendant ready.

8 THE COURT: Let's bring in the jury.

9 THE COURT OFFICER: Jury entering.

10 (Whereupon, the jury was properly seated in the courtroom.)

11 THE CLERK: Both sides stipulate that all sworn  
12 jurors are present and seated properly?

13 MR. BIANCAVILLA: Yes.

14 MR. CHAMBERLAIN: So stipulated.

15 THE COURT: Good morning, ladies and  
16 gentlemen. I hope everybody's well today, had a nice  
17 evening. We're ready to continue with the trial. Mr.  
18 Biancavilla, will you call your next witness, please.

19 MR. BIANCAVILLA: Detective Vito Schiraldi.  
20 D E T. V I T O P. S C H I R A L D I, having been called  
21 as a witness by the People and after having been first duly  
22 sworn by the Clerk of the Court, testified upon his oath as  
23 follows:

24 THE COURT OFFICER: In a loud voice would you  
25 give your full name, spelling your last name, shield

1 number and present command?

2 THE WITNESS: Vito P. Schiraldi. I'm a  
3 detective with the Nassau County Police Department. My  
4 shield number is 724, and I am assigned to the  
5 Scientific Investigation Bureau, the laboratory of the  
6 police department. S-C-H-I-R-A-L-D-I.

7 THE COURT: You may inquire.

8 MR. BIANCAVILLA: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MR. BIANCAVILLA:

11 Q. Detective Schiraldi, would you tell the jury,  
12 please, how long you've been a member of the Nassau County  
13 Police Department?

14 A. Just short of 16 years.

15 Q. And where are you currently assigned?

16 A. To the Scientific Investigation Bureau.

17 Q. And how long have you been a detective?

18 A. 10 years, nine years.

19 Q. Now, what are your responsibilities at the  
20 Scientific Investigation Bureau?

21 A. I'm responsible for the handling of the analysis of  
22 trace evidence with an emphasis on hairs, fibers, small minute  
23 materials such as wires, paint chips, glass, physical  
24 reconstruction such as hit and runs and things of that nature.

25 Q. Now, that would be your -- withdrawn.

1 Is it fair to say that your official title is you're  
2 a criminalist?

3 A. That's correct, yes.

4 Q. Tell the jury what a criminalist is.

5 A. A criminalist examines items that really don't fall  
6 into a true category. Such as serology has blood and bodily  
7 fluids; toxicology does liver samples, tissue, what not. It's  
8 anything that needs the microscope, anything that needs the  
9 microscope, any type of physical impression, anything, again,  
10 that doesn't fit into a true category, footprint, tire track,  
11 hair, fibers, paint chips, glass and what not.

12 Q. And do you specialize in microscopy?

13 A. Yes, I do.

14 Q. Explain to the jury what exactly is the specialty of  
15 microscopy?

16 A. Microscopy is the use of a microscope, light  
17 microscope, stereo light microscope, polarized light  
18 microscope, comparison light microscope, electron microscopy,  
19 to use the microscope in its forensic application to examine  
20 trace evidence.

21 Q. And what is your educational background?

22 A. I have a bachelor's of science in forensic science  
23 from John Jay College of Criminal Justice in Manhattan.

24 Q. And in addition to your educational background what,  
25 if any, other training have you received with respect to

1 criminalistics?

2 A. I've taken numerous courses through the FBI academy  
3 in Quantico, Virginia, in hair and fibers analysis, taken  
4 numerous courses with the Northeastern Association of Forensic  
5 Scientists, which I am a member, through the state police  
6 academy in Albany. And I've taken numerous courses with the  
7 New York Microscopical Society, which is a microscope society  
8 that is run out of the Natural History Museum in New York.

9 Q. Are you a member of any scientific investigation  
10 organizations or societies?

11 A. Yes, I'm a member of the Northeastern Association of  
12 Forensic Scientists and a member of the New York State  
13 Microscopical Society.

14 Q. Have you testified as an expert in criminalistics  
15 before?

16 A. Yes, I have.

17 Q. Approximately how many times?

18 A. Over four dozen times.

19 Q. And how many times have you been qualified as an  
20 expert in criminalistics in New York State?

21 A. Over four dozen times.

22 Q. And in what courts?

23 A. Nassau County District Court, County Court and in  
24 Nassau County Supreme Court.

25 Q. Now, have you ever not been qualified as an expert

1 in any court?

2 A. No, I have not.

3 Q. Now, how many years have you spent in the Scientific  
4 Investigation Bureau as a criminalist?

5 A. Just short of 15.

6 Q. And how many cases have you done in your 15 years of  
7 experience?

8 A. In the hundreds.

9 Q. Now, with respect to this particular case, is it  
10 fair to say that you examined various pieces of evidence  
11 during the course of this investigation?

12 A. Yes, I did.

13 MR. BIANCAVILLA: I'm going to ask that the  
14 witness be shown what has been marked as People's 68  
15 for identification.

16 Q. Do you recognize that, Detective?

17 A. Yes, I do.

18 Q. What do you recognize that to be?

19 A. These are the clothes I was asked to examine removed  
20 from the deceased. And the package, it bears my initials, VS,  
21 all over.

22 Q. I'm going to ask you when you're speaking to face  
23 the jury.

24 A. These are the clothes that I examined that were  
25 removed from the deceased at autopsy. I removed hairs and

1 fibers from them. They're mounted on glass slides. The  
2 slides are in this cardboard slide holder. It's packaged by  
3 myself, double sealed as I usually do, with my VS initials  
4 going through each of the double seals.

5 MR. BIANCAVILLA: Judge, we would offer that  
6 into evidence at this time.

7 THE COURT: Show that to Mr. Chamberlain,  
8 please.

9 VOIR DIRE BY

10 MR. CHAMBERLAIN:

11 Q. Detective, has that been opened since you examined  
12 it?

13 A. No, it has not.

14 Q. Have you had custody of it the whole time?

15 A. It was in property bureau.

16 Q. You personally haven't had it in custody?

17 A. No, I have not.

18 MR. CHAMBERLAIN: I'll consent, Judge.

19 THE COURT: Mark it in evidence please.

20 (Whereupon, People's Exhibit 68 was marked in evidence.)

21 THE COURT OFFICER: People's 68 received in  
22 evidence.

23 MR. BIANCAVILLA: Thank you.

24 CONT'D DIRECT EXAMINATION

25 BY MR. BIANCAVILLA:

1 Q. Now, Detective, you stated you examined that  
2 clothing for hair and fibers?

3 A. That's correct, yes.

4 Q. Now, with respect to that particular clothing, did  
5 you remove various hairs from that clothing?

6 A. Yes, I did.

7 Q. Now, in terms of explaining to the jury how you  
8 performed the examination of a hair, did you bring something  
9 with you to court today that would assist you in your  
10 explanation to the jury?

11 A. Yes, I did.

12 MR. BIANCAVILLA: I'm going to ask that the  
13 witness be shown People's 69 for identification.

14 Q. Detective, you're being shown what's been marked  
15 as People's 69 for identification. Does that fairly and  
16 accurately -- is that a fair and accurate copy of the master  
17 that you're going to use in front of the jury that's just a  
18 photocopy?

19 A. It is, yes.

20 MR. BIANCAVILLA: Judge, we would offer that  
21 into evidence.

22 THE COURT: Please show it to Mr.  
23 Chamberlain.

24 MR. CHAMBERLAIN: Short voir dire, Judge?

25 THE COURT: Yes.



1 VOIR DIRE BY

2 MR. CHAMBERLAIN:

3 Q. Detective, when was this prepared?

4 A. That picture there, this morning.

5 Q. This morning. Basically this is prepared for  
6 presentation at trial, not as part of your normal duties in  
7 the examination of evidence?

8 A. I have a larger one that I always use when I  
9 testify.

10 Q. You have another larger one than this?

11 A. I have the one that I use when I testify that I  
12 produced in 1989, and I've used it on several occasions since  
13 1989.

14 Q. What you're saying, this will help you explain what  
15 you did in connection with your examination; is that correct?

16 A. That's correct, yes.

17 MR. CHAMBERLAIN: I have no objection.

18 THE COURT: Mark it in evidence.

19 (Whereupon, People's Exhibit 69 was marked in evidence.)

20 THE COURT OFFICER: People's 69 received in  
21 evidence.

22 MR. BIANCAVILLA: Thank you.

23 CONT'D DIRECT EXAMINATION

24 BY MR. BIANCAVILLA:

25 Q. Now, Detective, could you explain to the jury what

1 you're holding up there in your hand?

2 A. This is a small section of a generic hair. A human  
3 hair is cylindrical for the most part. It's like a three --  
4 there's three anatomical regions. There are three anatomical  
5 regions of a hair. The outestmost [sic] portion being called  
6 the cuticle, that keeps the moisture in your hair, keeps it  
7 supple. Dirt and what not gets underneath the cuticle,  
8 scales, producing dry or brittle hair. The exterior portion  
9 is called the cortex. The small dots depict the pigment. The  
10 pigmentation that is in hair, the pigmentation is also a good  
11 indication and characteristic of the origin of that person, if  
12 he's black, white, Asian.

13 The central air canal, this medulla, is a black line  
14 running through some hairs. It's an air tube inside with air,  
15 animals have it, two-thirds of the width of the hair, they  
16 surmise, because of insulation, as animals still use their  
17 hair for insulation. As people evolve, the medulla is going  
18 slowly out of people's hair. I don't have a medulla in my  
19 hair. I've looked at my hair every day for 10 and a half  
20 years. Every day I mount my hair and look. Some people have  
21 a continuous medulla. Other people are fragmented and what  
22 not. A good generic hair.

23 Q. Now, when you are examining hair, explain to the  
24 jury what you're looking for.

25 A. The first thing I do with a hair if it's found on a

1 garment, I will just drop it. I'll sketch its natural  
2 contour, then I'll measure it. I'll mount it on a glass  
3 slide. I'll examine that with a stereo light microscope. For  
4 all intents and purposes, it's a magnifying glass, if you  
5 will. Mount it on a glass slide in a mounting medium called  
6 Puremount and put it under a compound light microscope and  
7 look at the microscopical characteristics. I measure the  
8 width of the hair, the distribution and the way this pigment  
9 is laid out within the hair. These other anatomical features  
10 are called ovoid bodies. This is a characteristic prevalent  
11 in bovine hairs, on cows. Humans have them. These air sacs  
12 are called cortical fusi.

13           Distribution and juxtaposition of these or the  
14 positioning of these characteristics within that hair shaft  
15 with a range of standard from an individual, I can say that  
16 person's hair looks like this. This question hair, does that  
17 fit within that range of characteristics? And if it does, I  
18 say it's consistent and could have come from. At that point  
19 it is said to be consistent microscopically.

20           Q.   Now, with respect -- you can put that down now.  
21 With respect to this particular case did you examine the  
22 various items of clothing that were depicted in People's 68?

23           A.   Yes, I did.

24           Q.   Could you tell the jury what the results of your  
25 examination were? What was the first item you looked at?

1 THE WITNESS: Judge, may I refer to my notes?

2 THE COURT: Yes, of course, to refresh your  
3 recollection.

4 MR. CHAMBERLAIN: May I ask the witness to  
5 let me look at his notes so I can compare them with  
6 mine?

7 MR. BIANCAVILLA: Judge, I'm going to object.  
8 Judge, he's interrupting this witness's testimony. He  
9 has all the notes that were provided to him prior to  
10 commencement of this trial.

11 THE COURT: Counsel, actually, Mr.  
12 Chamberlain does have a right to compare the original  
13 notes with the copy. Just take a moment, Mr.  
14 Chamberlain.

15 MR. CHAMBERLAIN: Thank you, Judge.

16 (Brief pause.)

17 MR. CHAMBERLAIN: Thank you, Judge.

18 Q. Detective Schiraldi, what was the first item that  
19 you examined?

20 A. A gray bra.

21 Q. What was -- did you find anything on the gray bra?

22 A. Let me refer to my notes, please. Yes, I did.

23 Q. What did you find?

24 A. A hair.

25 Q. Would you describe the hair for the jury?

1 A. It was a hair of animal origin.

2 Q. What was the next item you examined?

3 A. Socks.

4 Q. Did you find anything on the socks?

5 A. Yes, an animal hair also.

6 Q. What was the next item you examined?

7 A. A pair of blue panties.

8 Q. Did you find anything from the blue panties?

9 A. Yes, hair of animal original and a chemically  
10 treated scalp hair of human origin, Caucasian human origin.

11 Q. Did you compare that chemically treated scalp hair  
12 to the hair standards you received from the deceased in this  
13 case?

14 A. Yes, I did.

15 Q. Just briefly describe to the jury what a hair  
16 standard is.

17 A. Again, a hair standard, as I have some gray hairs on  
18 the side of my head, what I want to do when I look at a  
19 person's hair standard, I want to get a good representative of  
20 what that person's hair looks like. I want to see the gray  
21 hairs. I want to see the darker hairs. I want to see maybe  
22 some of the thinner hairs that might be -- like on myself I'm  
23 losing a little hair back here, so it might be a little  
24 thinner. All these range of characteristics are set forth  
25 from that person.

1           Then I look at the fiber regions of the head, the  
2 right, the left, the front, the back, the vertex and the nape  
3 of the neck. I look at all those and get a range of  
4 characteristics. If the question hair that I look at fits  
5 within that range, it's consistent with and could have come  
6 from.

7           Q.    Could you tell the jury with respect to the hair,  
8 the Caucasian hair from the panties, within a reasonable  
9 degree of scientific certainty as to the origin of that hair?

10          A.    Yes, I could. It originated from the deceased.

11          Q.    Now, did you examine another item?

12          A.    Yes, I did, a blouse.

13          Q.    What did you find on the blouse?

14          A.    On the blouse also animal hairs and chemically  
15 treated scalp hairs of Caucasian origin.

16          Q.    Did you determine the origin of the chemically  
17 treated Caucasian hairs that you found?

18          A.    Yes, I did.

19          Q.    Could you tell the jury within a reasonable degree  
20 of scientific certainty the source of that hair?

21          A.    Again, they originated from the scalp of the  
22 deceased.

23          Q.    Now, did you examine another piece of evidence in  
24 this particular case?

25          A.    Yes, I did.

1 Q. What was that?

2 A. Pair of overall pants and a black dual copper wire.

3 Q. Now, the overall pants, was anything recovered from  
4 that?

5 A. No, there were not.

6 Q. How about the copper wire?

7 A. Yes, there was a number of hairs left in a knot that  
8 I left intact. I sampled some of those hairs, most of those.  
9 I left a few because I did not want to remove the knot and  
10 disturb the wire cord in any way.

11 Q. I'm going to show you People's 43 in evidence. I  
12 ask you to take a look at that. Is that what you examined?

13 A. Yes, it is.

14 Q. Could you tell the jury with a reasonable degree of  
15 scientific certainty as to the source of the hairs in that,  
16 that you examined from there?

17 A. Again, they originated from the scalp of the  
18 deceased.

19 Q. Thank you, Detective. Were there any other hairs  
20 recovered from the body, Detective?

21 A. No, there were not.

22 Q. Not body. From the clothing that you examined?

23 A. No, there were not. The bra, the socks, the  
24 panties, the blouse and the cord.

25 Q. You're going to have to speak up.

1 A. The bra, the socks, the panties, the blouse and the  
2 knotted cord, those are the only hairs that were recovered.

3 Q. Now, Detective, what was the next item -- withdrawn.

4 Did you examine a piece of black plastic --

5 A. Yes.

6 Q. -- during the course of your examination?

7 A. Yes, I did.

8 Q. I'm going to show you People's 44 for  
9 identification. Do you recognize that, Detective?

10 A. Yes, I do.

11 Q. What do you recognize that to be?

12 A. This is a Leatherman tool, the Leatherman tool  
13 sheath or belt holster and a small sample box that has a small  
14 black piece of fragment of luminous black, like, plastic that  
15 was removed from the interior handle of the Leatherman type  
16 tool.

17 Q. Did you examine both that black piece of plastic and  
18 the tool?

19 A. Yes, I did.

20 MR. BIANCAVILLA: We would offer that into  
21 evidence at this time.

22 THE COURT: Please show it to Mr.  
23 Chamberlain.

24 MR. CHAMBERLAIN: I have no objection, Judge.  
25 I've seen it. Thank you.



1 THE COURT: Mark it in evidence.

2 (Whereupon, People's Exhibit 44 was marked in evidence.)

3 THE COURT OFFICER: People's 44 received in  
4 evidence.

5 Q. Could you explain to the jury what exactly you did  
6 with that piece of black plastic?

7 A. The piece of black plastic that was removed from the  
8 Leatherman type tool's blade -- that's a multi-tool -- was  
9 subjected to Fourier transformation infrared spectroscopy. I  
10 also made a small -- out of this small piece of plastic I took  
11 thin layers and I put it into an IR spectroscopy, which is an  
12 IR beam passing through the sample which is a small piece of  
13 plastic.

14 Depending on the molecular structure, what the  
15 chemical structure of that plastic or any polymer substance  
16 may be, it causes different energy vibrations. These energy  
17 vibrations are absorbed or not absorbed depending upon if it's  
18 CO, like a molecule of carbon, oxygen or hydrogen and these  
19 things tend to absorb energies at a different level.

20 Depending on what that substance may be, the energies are  
21 absorbed and it gives you a spectrum or spectroscopy of what  
22 that sample is. I also did the same with the sample of the  
23 cord and I found that these two items were dissimilar.

24 Q. So the piece of black plastic inside the Leatherman  
25 tool did not come from the phone wire?

1 A. That's correct.

2 Q. It came from some other source?

3 A. That's correct.

4 Q. With respect to the Leatherman tool that's also in  
5 People's 44, what did you do with the Leatherman tool?

6 A. I examined the jaws on it and at that time I didn't  
7 do any further analysis of that tool at that time.

8 Q. Now --

9 MR. CHAMBERLAIN: What time, Judge?

10 THE COURT: Excuse me?

11 MR. CHAMBERLAIN: I'm not sure what time he's  
12 talking about.

13 THE COURT: When did you do this examination,  
14 Detective?

15 THE WITNESS: On the Leatherman tool?

16 THE COURT: Yes.

17 THE WITNESS: When I first received that.

18 Q. What was the date of that, Detective?

19 A. On 11/8/00.

20 Q. Now, what did you do with it on that particular day?

21 A. I just examined the cord and the Leatherman tool and  
22 the sheath.

23 Q. What observations did you make about the Leatherman  
24 tool itself on that particular day?

25 A. That it was -- the jaws and the lock and the cutting

1 part of it were well used, and the tool was used quite often  
2 and it had a little play in it. And it also was a functioning  
3 tool.

4 Q. What did you do with respect to the cord?

5 A. At that time when I first received the cord on the  
6 other date -- may I refer to that date?

7 Q. Yes.

8 A. As I do with most of my evidence, I sketch it. I  
9 examine it and sometimes if there's something pertinent on it  
10 I usually photograph something that's unique.

11 Q. Just so it's clear, what date did you receive the  
12 cord?

13 A. On April 20, the year 2000 at 1213 hours.

14 Q. What date did you receive the Leatherman tool?

15 A. November 8 of 2000.

16 Q. Now, what did you do with the cord when you first  
17 looked at it?

18 A. I sketched it, as I have in my notes, and I  
19 photographed an end that was, I assumed, was cut or torn in  
20 some manner, from the edge.

21 Q. Now, during the course of your investigation did you  
22 determine what type of cord that was?

23 A. Yes, I did.

24 Q. Tell the jury what type of cord it was.

25 A. It's similar to the power cord that would be used on

1 a phone or answering type machine.

2 Q. Were you able to determine what this power cord  
3 looked like completed without the cut end?

4 A. Yes.

5 Q. How did you do that?

6 A. I did a search, because I know it was a Phonemate  
7 phone. I did a search of the computer to find out what type  
8 of phones, a Phonemate type phone, what type of cords they  
9 had. And just from visually examining that cord I can  
10 interpolate what the cord intact would look like.

11 MR. BIANCAVILLA: I'm going to ask that the  
12 witness be shown People's 70 for identification.

13 THE COURT: Okay.

14 Q. Detective, is that -- does that photograph fairly  
15 and accurately depict the complete Phonemate power cord that  
16 you're referring to?

17 A. Yes, it would. It also has the black and white  
18 lines that it also has.

19 Q. In other words, the photograph in that picture would  
20 be the complete Phonemate cord. This is a Phonemate cord that  
21 has been cut?

22 A. Yes, it's minus a transformer that you plug into a  
23 wall.

24 MR. BIANCAVILLA: We offer that into evidence,  
25 Judge.

1 THE COURT: Please show that to Mr.  
2 Chamberlain.

3 MR. CHAMBERLAIN: Short voir dire, Judge?

4 THE COURT: Yes.

5 MR. CHAMBERLAIN: Thank you.

6 VOIR DIRE BY

7 MR. CHAMBERLAIN:

8 Q. You received this from the manufacturer, this  
9 exhibit?

10 A. No, from the computer. I just downloaded it from  
11 the computer.

12 Q. You downloaded it. It's a download of a web site  
13 from the manufacturer?

14 A. It's Ebay.

15 Q. Ebay, okay. Ebay sells this particular item, I see.

16 A. Ebay sells many items. That's one of the items that  
17 they may sell.

18 Q. And when did you receive this, Detective?

19 A. I think it was about two weeks ago, maybe right  
20 about this time.

21 Q. Two weeks ago?

22 A. Yes.

23 Q. So this again was not prepared as part of your  
24 normal process of investigation of a crime. This was prepared  
25 for trial; is that correct?

1 MR. BIANCAVILLA: Objection.

2 THE COURT: Well, that's certainly not a voir  
3 dire question, Mr. Chamberlain.

4 Q. Did you make any notation in your record,  
5 Detective, concerning the type of cord or where this cord came  
6 from in your notes that you keep in the regular course of your  
7 business?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: That's not a voir dire question  
10 either, Mr. Chamberlain.

11 Q. Just one more question: Detective, you received  
12 the cord, I think you said, on a date in April 2000.

13 A. Yes.

14 MR. BIANCAVILLA: Objection.

15 THE COURT: I haven't heard the question.

16 MR. BIANCAVILLA: He just asked it, Judge.

17 MR. CHAMBERLAIN: It's the date he received  
18 it.

19 MR. BIANCAVILLA: It's voir dire on a  
20 picture, not when he received the cord.

21 THE COURT: The last response from the  
22 witness should be struck.

23 MR. CHAMBERLAIN: No further questions. No  
24 objection.

25 THE COURT: Mark it in evidence.

1 (Whereupon, People's Exhibit 70 was marked in evidence.)

2 THE COURT OFFICER: People's 70 received in  
3 evidence.

4 MR. BIANCAVILLA: Can you give that to the  
5 witness, please.

6 CONT'D DIRECT EXAMINATION

7 BY MR. BIANCAVILLA:

8 Q. Detective, would you just put that yellow arrow and  
9 point to the power cord we're referring to in the photo?

10 A. (Indicating.)

11 MR. BIANCAVILLA: I ask if we can just pass  
12 that to the jury, because that won't display well on  
13 the presenter.

14 THE COURT: Yes, we can publish it to the  
15 jury.

16 MR. BIANCAVILLA: Thank you.

17 (Whereupon, People's Exhibit 70 was published to the jury.)

18 MR. BIANCAVILLA: I ask that the witness be  
19 shown People's 71 and 72 for identification.

20 Q. Detective, you're being shown what has been marked  
21 as People's 71 and 72 for identification. Do you recognize  
22 those photographs?

23 A. Yes, I do.

24 Q. What do you recognize those photographs to be?

25 A. These are photographs I took on the afternoon of

1 4/20 of the year 2000.

2 Q. Don't show them to the jury yet. Do they fairly and  
3 accurately depict the cut ends of the wire that you  
4 photographed on that particular date?

5 A. They depict it very well, yes.

6 MR. BIANCAVILLA: We offer those into evidence,  
7 Judge.

8 MR. CHAMBERLAIN: No objection, Judge.

9 THE COURT: Mark them in evidence.

10 (Whereupon, People's Exhibits 71 and 72 were marked in  
11 evidence.)

12 THE COURT OFFICER: People's 71 and 72 received  
13 in evidence.

14 Q. Now, Detective Schiraldi, when as a criminalist  
15 you were comparing items or areas that have been cut, are  
16 there different ways that cuts occur?

17 A. Yes, there are several dynamics that happen within  
18 fibers, wire, rope, steel, when it is cut or forced to break.

19 Q. Could you slowly explain to the jury the various  
20 dynamics that take place when something is cut?

21 A. It's all dependent on which type of implement is  
22 being used. If a metal -- corded metal like a strap or like a  
23 crane line is corded, if it breaks, the ends tend to ball.  
24 The steel stretches physically to the point -- it's called  
25 tensile strength -- and it snaps, the ends ball.



1           The forces of a knife blade against a hard  
2 substance, you'll see a grating towards where it hits the hard  
3 substance. If something is folded and cut with a knife you'll  
4 see a curvature and a slice. If something is cut or pinched  
5 with a wire cutter, the jaws meet at a 90-degree angle or in  
6 the same plane, so you'll see an apex or pinch cut is what I  
7 call it, because the jaws come together and the little portion  
8 of the wire or item that sticks up is left.

9           If it's cut with a lopping type action or shearing  
10 type action such as a scissor, it turns to one direction  
11 because it lies on the bottom of the scissor and the knife  
12 blade comes across the top and tends to fold that over.

13           Q. Now, Detective, did you bring various items with you  
14 to court today to assist you in explaining to the jury these  
15 various principles of cutting?

16           A. Yes, I did.

17           MR. BIANCAVILLA: I ask that the witness be  
18 shown People's 73, 74, 75, 76 and 77 for  
19 identification.

20           THE COURT: Okay.

21           MR. CHAMBERLAIN: Judge, could I see the  
22 exhibits before they're shown to the witness?

23           THE COURT: Sure.

24           MR. CHAMBERLAIN: May we approach, your  
25 Honor?

1 THE COURT: Yes. Could you step down a  
2 moment, Detective.

3 (Whereupon, the witness exited the courtroom.)

4 (Whereupon, the following colloquy was held at the bench.)

5 MR. CHAMBERLAIN: Judge, these are more items  
6 that were assembled for preparation for trial, not  
7 anything provided previously to the defense, and I feel  
8 the introduction of this type of material to this jury  
9 might well confuse them. And I object to the  
10 procedures whereby they're offering pictures of tools  
11 that aren't in evidence here and the fact that we  
12 weren't provided with any prior knowledge. Now, you  
13 have the telephone cord, but this is getting to a  
14 fairly material area regarding the cuts. There are  
15 pictures of the tool --

16 THE COURT: I gather the People are using  
17 this as a demonstrative tool in order to show different  
18 methodologies of cutting a wire.

19 MR. CHAMBERLAIN: That's my understanding,  
20 Judge. All I'm saying is I think they could  
21 demonstrate it without offering pictures.

22 THE COURT: How else are they going to do it?  
23 Are you actually demonstrating it in court?

24 MR. BIANCAVILLA: That's what we're going to  
25 do. The only reason I've had those marked is so there

1 is a record of what we used in the courtroom.

2 Detective Schiraldi is going to take those items out of  
3 his bag and we were actually going to cut various items  
4 in front of this jury and then put them up on the  
5 presenter so that the jury can see the different cuts.  
6 I'm then going to have Detective Schiraldi open up the  
7 evidence, take out the Leatherman cord and actually cut  
8 the ligature with the Leatherman tool in front of this  
9 jury and then display for the jury the result of that  
10 cut with the Leatherman.

11 MR. CHAMBERLAIN: I'm going to object to that  
12 last part, Judge.

13 MR. BIANCAVILLA: I'll show you Richardson's,  
14 Judge. There is absolutely nothing wrong with doing a  
15 demonstration in front of the jury with evidence,  
16 because it's very important that the jury understand  
17 the various types of cuts that could be produced using  
18 various types of tools.

19 THE COURT: Section 4-

20 MR. CHAMBERLAIN: Judge, I'm not going to  
21 have an objection to the demonstration of the tools.

22 THE COURT: You don't or you do?

23 MR. CHAMBERLAIN: I don't. I'm not objecting  
24 to that. I'm objecting to the tools -- if he wants to  
25 show the various types of tools, I have no objection.

1 THE COURT: Let me ask Mr. Biancavilla, what  
2 is the purposes of the photographs?

3 MR. BIANCAVILLA: Because we are not going to  
4 leave the tools. He's going to use the tools to make  
5 those cuts of those two types of wires. I'm making a  
6 record of the tools that were used and the wires that  
7 were cut. In other words, Judge, I'm offering these  
8 the same way I offered a photocopy of the big chart.  
9 We're not leaving the big chart here. We've got a  
10 photocopy of it. I've made a photocopy of these.

11 THE COURT: Because we don't want the jury to  
12 have these in the jury room.

13 MR. BIANCAVILLA: Exactly, because we don't  
14 want to leave the tools here.

15 MR. CHAMBERLAIN: I don't think the tools  
16 that are used for demonstration should be given to the  
17 jury and I'm not certain about the pictures.

18 THE COURT: We are not going to do that.  
19 That's why I said that.

20 MR. BIANCAVILLA: This is for the appellate  
21 record, Judge.

22 THE COURT: Mr. Biancavilla, this is just for  
23 the appellate record so they have a photograph. I  
24 guess it's a photograph.

25 MR. CHAMBERLAIN: He's not offering them in

1 evidence?

2 MR. BIANCAVILLA: I have to.

3 THE COURT: For the purpose of making an  
4 appellate record if there's a conviction.

5 MR. CHAMBERLAIN: He can mark them for I.D.  
6 for the appellate record, Judge.

7 MR. BIANCAVILLA: I don't believe so. They  
8 have to be in evidence, Judge.

9 MR. CHAMBERLAIN: I don't think so.

10 THE COURT: Do we agree we don't show these  
11 photographs to the jury?

12 MR. BIANCAVILLA: I don't care. They don't  
13 have to see it.

14 THE COURT: Mr. Chamberlain, you have no  
15 objection to placing People's 75, 76, 77, 73 and 74  
16 into evidence solely for the purpose of an appellate  
17 record without showing these to the jury?

18 MR. CHAMBERLAIN: Absolutely.

19 MR. BIANCAVILLA: That's fine.

20 THE COURT: Okay. With respect to the  
21 demonstration do you have any objection, Mr.  
22 Chamberlain?

23 MR. CHAMBERLAIN: With respect to the  
24 demonstration on the actual evidence?

25 MR. BIANCAVILLA: Absolutely. When he gets

1 done demonstrating these wires, when he's done with  
2 that demonstration, he's going to use People's Exhibit  
3 44 which is the Leatherman tool, this here. He's going  
4 to open up People's Exhibit 43, remove the ligature and  
5 actually cut the ligature in front of the jury and  
6 display to the jury the cut end on the presenter.

7 MR. CHAMBERLAIN: I feel this would create a  
8 circus atmosphere.

9 THE COURT: I don't think it's a circus  
10 atmosphere. Let me tell you what the law is, Mr.  
11 Chamberlain. I had an opportunity to research this  
12 issue, because I'm looking at what Richardson's says,  
13 Section 4-219: The result of an experiment or test is  
14 admissible on trial to show the nature, quality or  
15 tendency of an object, provided that the trial judge is  
16 satisfied that the conditions under which the  
17 experiment or test was conducted were sufficiently  
18 similar to those existing at the time in question to  
19 make the result achieved by the test relevant to the  
20 issue. If the conditions are similar, the evidence  
21 should be admitted. Any difference in circumstances  
22 affect the weight of the evidence but is not a basis  
23 for its exclusion. But if the test conditions are not  
24 shown to have been sufficiently similar, the results of  
25 the test is inadmissible.

1 Now, basically what's going to happen here is  
2 the detective is going to be cutting a wire and it's  
3 going to show you, I suppose, different angles of how  
4 the cutting tool cut a particular wire.

5 MR. CHAMBERLAIN: I have retained an expert.  
6 We've gone over, looked at the wire, looked at the  
7 material in preparation for this. I've got an expert  
8 who actually trained this detective, and I had no  
9 opportunity of reviewing what type of cuts there were.  
10 And I think a cut on a ligature cord itself is really  
11 at this point something I can't analyze and I can't  
12 properly be prepared for. And it would create a  
13 dramatic effect in front of this jury.

14 MR. BIANCAVILLA: Judge, if I could add  
15 something. His expert actually went to the Nassau  
16 County Police Department laboratory, examined this  
17 evidence, examined the Leatherman tool, made cuts with  
18 the Leatherman tool on various pieces of wire, and he's  
19 not doing anything more today than what Detective  
20 Schiraldi is going to do in front of this jury.

21 THE COURT: That was my concern. Mr.  
22 Chamberlain, your expert had an opportunity to do  
23 exactly what the detective is going to be doing in  
24 front of this jury. Is that true, he had that  
25 opportunity? That's what Mr. Biancavilla said.

1 MR. CHAMBERLAIN: The opportunity was part of  
2 an investigative process.

3 THE COURT: Yes, but, Mr. Chamberlain, all  
4 he's doing is cutting a wire. Is that what happened at  
5 the time?

6 MR. BIANCAVILLA: Yeah.

7 THE COURT: We're talking about cutting.

8 MR. CHAMBERLAIN: He did more.

9 THE COURT: All this can be done.

10 MR. CHAMBERLAIN: There was microscopic  
11 examination.

12 THE COURT: And there's testimony as to that.

13 MR. CHAMBERLAIN: Photographs and so forth.  
14 I understand that. I'm only concerned about the  
15 demonstration Detective Schiraldi is going to do in  
16 front of this jury.

17 THE COURT: I'm told your experts had an  
18 opportunity to do exactly what Detective Schiraldi is  
19 going to demonstrate to us and the jury right here in  
20 the court, so based on that --

21 MR. CHAMBERLAIN: I don't know exactly what  
22 he's going to demonstrate. As far as I can tell --

23 THE COURT: Mr. Biancavilla told me he's  
24 going to cut a wire.

25 MR. BIANCAVILLA: Exactly.



1 MR. CHAMBERLAIN: It's not scientific  
2 investigation that was done previously. In any event,  
3 Judge, as far as these pictures, they will not go to  
4 the jury?

5 THE COURT: That's absolutely correct.

6 MR. CHAMBERLAIN: Okay.

7 THE COURT: With respect to the  
8 demonstration.

9 MR. CHAMBERLAIN: I would still, for the  
10 record, continue my objection. I don't think it's  
11 appropriate, but I've heard your Honor's ruling.

12 THE COURT: As long as the proper foundation  
13 is laid by the detective that it's a similar situation,  
14 similar to the one existing at the time I will permit  
15 it to be done in the courtroom.

16 (Whereupon, the proceedings continued in open court.)  
17 (Whereupon, People's Exhibit 73 through 77 were marked in  
18 evidence.)

19 THE COURT OFFICER: People's 73 through 77  
20 received in evidence.

21 MR. BIANCAVILLA: Thank you. Judge could we  
22 ask permission to have the witness step in front of the  
23 jury with the various tools that he has so he could  
24 stand and work off the board?

25 THE COURT: Yes.

1 Q. Now, Detective, could you please display to the  
2 jury what you've brought with you today to demonstrate the  
3 various types of cuts that can be produced?

4 A. Single pocket knife.

5 Q. That would be People's 74.

6 A. Pair of small wire cutters.

7 Q. That would be People's 75.

8 A. Pair of large lineman dikes, pair of wire cutters  
9 also.

10 Q. People's 73.

11 A. Section of Romex. This is what you have in your  
12 house, electrical wire that goes to your house.

13 MR. CHAMBERLAIN: Detective, would you repeat  
14 that?

15 A. Romex, regular household -- this is the wire that  
16 is in your wall, goes to the receptacles. And a small piece  
17 of multistrand, multifilament wire.

18 Q. People's 76.

19 A. And a small piece of multifilament wire.

20 Q. People's 77. The only thing I'll ask you,  
21 Detective, is to speak up. Would you please explain to the  
22 jury the type of cut that is produced with a knife?

23 A. With a knife there are two types of dynamics that go  
24 along with the knife. Again, you have a hard rigid substance;  
25 you lay a cylindrical tube over it; and this is the wire and

1 you cut down with the force this way. What will happen will  
2 be, if it's a slight angle on a copper wire you'll see  
3 something of this nature (indicating.) What you're doing here  
4 is you're plowing the soft copper wire down at an angle and  
5 it's being deposited in a small type of ridge right there.  
6 That's just the wire itself.

7 Q. Could you please demonstrate a cut on the Romex  
8 cable, on the Romex wire, with a knife and explain it on the  
9 presenter?

10 A. I'll cut it on this (indicating.)

11 MR. BIANCAVILLA: Judge, can we have the lights  
12 shut off, please?

13 THE COURT: Yes.

14 A. The direction you see is depicted here. See that  
15 filing down there, that small ridge? The force was applied  
16 this way. The soft copper wire was lying; I pushed it all  
17 down. It lies upon the hard substrate of the surface and then  
18 it broke. We're clear on that? Do you understand what I'm  
19 saying?

20 The other dynamics, I can't do it with this one.  
21 I'll draw it and I'll show you with this one. It won't be as  
22 pronounced, but a small or thinner wire that you're going to  
23 cut with a knife, in most occasions you'll have to cut it like  
24 this, put the knife blade in and pull out. So in this type of  
25 scenario you'll have a wire come up like this and you'll see

1 that force come through it. Now, this is a -- I'll try it  
2 again but I've been trying with this particular wire to cut it  
3 with this dull knife. Now, you see that hooking effect and  
4 that push, that force? So you'll see the cylinder, if you  
5 will, slightly turned where I have to move it to put my knife  
6 in it. The force goes out. Again, you see that same dynamic  
7 that you're seeing here but you're seeing this angulation or  
8 this hooking curvature when I go through it.

9 With a pair of wire cutting tools or dikes, what  
10 you're going to see is the cylinder will be here; this is the  
11 wire, if you will; the jaws will come in. They're slightly  
12 curved like this. They'll come in; they'll squeeze the wire  
13 until -- they'll squeeze the wire until you see something like  
14 this (indicating.) That's the two jaws are coming in with  
15 enough tensile strength where the wire breaks, the apex or  
16 zenith type cut, the highest point on the plane. You see  
17 that? It comes from one side, the other side, either end pops  
18 up.

19 The other is a shearing type effect. May I use the  
20 Leatherman tool?

21 Q. Yes.

22 MR. BIANCAVILLA: Judge, let the record  
23 reflect, please, that People's Exhibit number 44 is  
24 being opened in front of jury and the Leatherman tool  
25 is being removed by Detective Schiraldi.

1 THE COURT: The record should reflect that.

2 A. Leatherman type tool. There's two jaws in here  
3 like a scissor. They're very small. They're shearing  
4 together such as a scissor. Can you all see that? The  
5 shearing goes in there like a scissor.

6 Q. Could you describe for the jury the wear on that  
7 tool?

8 A. The jaws on this tool have been used to the point to  
9 where they should be flat like scissor type jaws like this,  
10 they wear over the years from multiple cutting. These sharp  
11 edges were planed together and milled together so they sliced  
12 as a shear. There are small indentations and scratches from  
13 the hardness of the wire they once were cutting or whatever  
14 they cut, whatever they tried to cut. They're scored and  
15 used. These are physical impressions. These are unique  
16 individual characteristics to this tool.

17 A plane blade is a class characteristic. Every tool  
18 manufactured by Leatherman, this tool, has a flat blade that's  
19 a class characteristic, as scissors or lopping shears that you  
20 use on hedges or what not. Class characteristics; small  
21 individualizing characteristics. What we have here is we have  
22 a blade, and as you can see it's milled in such a fashion that  
23 it's given strength on this side, and this is your sharpened  
24 edge and just the opposite on the bottom.

25 Q. Detective, I'm going to ask you to speak slower

1 please so the reporter can get it all down.

2 A. On the inside of the Leatherman tool you have the  
3 same type of configuration, sharpened edge, sharpened edge,  
4 and they squeeze together as a scissor, a scissor or shear  
5 together. These meet causing the cut. What you'll see in  
6 most cases like this, when the monofilament wire, that thick  
7 wire, is cut, you'll see something like this. It's almost  
8 very similar to that force that you saw with the knife but  
9 you'll see it a little bit more sharper and this will be less  
10 pronounced shearing. And in some cases this will turn, this  
11 last little bit will turn and flatten as it's going through  
12 the shear, scissoring action. Depending on how sloppy the  
13 tool is, it will cause the monofilament to bend and twist and  
14 leave a heavier deposit on this.

15 Q. When you say sloppy, what does that mean?

16 A. Sloppy being the wear on the width. You've got a  
17 scissor. It's got this little screw there. And you cut the  
18 paper and the paper bends. You've got to get your screw  
19 driver out and tighten that up. When you go the next time it  
20 slices tightly. The scissor is getting worn. Wear and tear,  
21 it's causing these jaws to open up.

22 MR. CHAMBERLAIN: Judge, I have a strenuous  
23 objection to all of this. We were told --

24 MR. BIANCAVILLA: Judge, I'm going to object  
25 to any comments while this witness is testifying.

1 THE COURT: Let's do it at the bench, please.

2 (Whereupon, the following colloquy was held at the bench.)

3 THE COURT: Yes, Mr. Chamberlain.

4 MR. CHAMBERLAIN: This contradicts what we  
5 were told. First of all we were told that we were  
6 going to have a demonstration of other tools that were  
7 put in, common tools that were not part of this case.  
8 We were given Rosario material and discovery material  
9 that indicates his findings and the basis for his  
10 findings with respect to this cord, with respect to the  
11 tool. We have FBI reports with respect to the tool,  
12 all of which is contradicted by what he's testifying  
13 to. This is completely misleading and it's on a  
14 crucial point of evidence. We have evidence that his  
15 initial report of the examination of the cut wire was a  
16 one direction force, a knife force. That's what we're  
17 getting here.

18 THE COURT: If you have that evidence you can  
19 certainly cross-examine him on it.

20 MR. CHAMBERLAIN: This is completely  
21 misleading. I will cross-examine him on it.

22 THE COURT: Of course.

23 MR. CHAMBERLAIN: Why is he being allowed to  
24 put in all this business about this being unique and  
25 there's absolutely nothing on that?

1 MR. BIANCAVILLA: Judge, he can cross-examine  
2 him on it.

3 MR. CHAMBERLAIN: What we have contradicts  
4 that. We have the FBI report that says there's no way  
5 they can tell this is the same tool. There's nothing  
6 in it. They can't distinguish it.

7 THE COURT: I believe you.

8 MR. BIANCAVILLA: Nobody is going to say this  
9 is the same tool. I don't know what he's talking  
10 about. He's not going to say anything contradictory to  
11 what's in his report.

12 MR. CHAMBERLAIN: He's already said it.

13 MR. BIANCAVILLA: So he'll cross-examine him  
14 on it.

15 MR. CHAMBERLAIN: I will.

16 MR. BIANCAVILLA: Judge, can we give the jury  
17 a break? They've been here over an hour already.

18 THE COURT: Ladies and gentlemen, at this  
19 time we're taking a short break. Again, do not discuss  
20 this case among yourselves or with anyone else. Keep  
21 an open mind. Don't form or express any opinions until  
22 the entire case has been completed. Do not read or  
23 listen to any account of this case that is reported in  
24 the media. Don't visit or view any premises that have  
25 been mentioned. You are not to permit any party to



1 discuss this case with you. If anyone attempts to do  
2 so, you must promptly report to the Court any violation  
3 thereof. Please follow the court officer.

4 (Whereupon, the jury exited the courtroom.)

5 (Whereupon, the witness exited the courtroom.)

6 THE COURT: Counsel, we'll take a very short  
7 break, then I'll hear arguments with respect to your  
8 objection, Mr. Chamberlain.

9 (Brief recess.)

10 THE COURT: Let the record reflect that the  
11 jury is not present but all counsel and defendant are  
12 present. Mr. Chamberlain.

13 MR. CHAMBERLAIN: Yes, Judge. We had started  
14 this on the record at the bench and just to follow up  
15 on that, the FBI report concludes that, first of all,  
16 that the Q1 exhibit, that was the Leatherman tool that  
17 they were examining, shearing type -- I'm sorry. Q1 is  
18 the cord. Q1 exhibits shearing type tool marks like  
19 those produced by the -- like those produced on the  
20 multitool. However, it could not be determined whether  
21 or not these were produced by the one multitool to the  
22 exclusion of all other shearing type tools. The  
23 preliminary examination of the tool by this expert was  
24 different from theirs with respect to the type of cuts  
25 but there's nowhere in any material we've been provided

1 by way of discovery or even Rosario that indicates that  
2 there's anything unique about this tool reflecting a  
3 unique cut, which is what he's trying to show here.

4 MR. BIANCAVILLA: No, he's not, Judge. He's  
5 not trying to show that at all. He hasn't even got it.

6 MR. CHAMBERLAIN: First of all, Mr.  
7 Biancavilla, I'd appreciate it if you wouldn't  
8 interrupt me.

9 MR. BIANCAVILLA: Mr. Chamberlain, you're  
10 wasting time.

11 THE COURT: Counsel, I don't -- please, no  
12 argument, no arguments. I want to hear legal argument,  
13 not arguments.

14 MR. CHAMBERLAIN: That's fine with me, Judge.

15 THE COURT: Now, what is the nature of your  
16 objection? What actually are you objecting to, Mr.  
17 Chamberlain, so I can get at that?

18 MR. CHAMBERLAIN: What he's doing here in  
19 talking about the type of cuts and uniqueness of this  
20 thing is confusing and misleading this jury.

21 THE COURT: You're talking about the  
22 demonstration?

23 MR. CHAMBERLAIN: I'm talking about the  
24 demonstration.

25 THE COURT: Just so the record is clear, the

1 different tools that the detective brought with him,  
2 the knife and he called it the dike, and there were  
3 different tools that made different types of cuts, is  
4 that what you're referring to?

5 MR. CHAMBERLAIN: No, Judge.

6 THE COURT: You have no objection to that  
7 then?

8 MR. CHAMBERLAIN: As I indicated before --

9 THE COURT: I'm a little confused about what  
10 your objection is.

11 MR. CHAMBERLAIN: I'm trying to explain that,  
12 Judge. I had no objection to that. I thought what was  
13 going to be done was a demonstration of the different  
14 types of cuts. He's --

15 THE COURT: That's what he's been doing up  
16 until now.

17 MR. CHAMBERLAIN: I disagree, Judge. When he  
18 takes the Leatherman tool and he starts talking about  
19 the uniqueness of the blades and three or four times  
20 Mr. Biancavilla has brought out how sloppy it is and  
21 this and that, referring to cuts, that's not talking  
22 about different types of cuts of different tools in  
23 general, which is what I thought. There's no  
24 similarity between this procedure and what they do in  
25 the laboratory or what was done here. There's been no

1 showing of that.

2 I have no objection -- I don't care if they  
3 don't show it's the same type of blade, the same type,  
4 the same force, the same dullness or not. All of those  
5 would affect this. If they're just demonstrating a one  
6 dimensional cut versus a shearing type cut, a pincer  
7 type cut, I have no objection to demonstrating for the  
8 purposes of explaining to the jury those different  
9 types of cuts. When you get into the particular  
10 evidence which we have been studying which I have had  
11 an expert on and he starts misleading the jury about  
12 this thing has certain unique characteristics and he's  
13 going to show the cut, we have nothing in the record  
14 with regard to that. What we have in the record  
15 contradicts that.

16 THE COURT: Then you certainly have fertile  
17 cross-examination material, Mr. Chamberlain.

18 MR. CHAMBERLAIN: I understand that. There's  
19 so much material that goes into this case, Judge, and  
20 at the end of the day, at the end of two weeks, this  
21 jury is going to be completely confused and I don't  
22 know what they're going to remember.

23 THE COURT: Mr. Chamberlain, if you're  
24 telling me that the detective is testifying in  
25 contravention as to the reports that were received by

1       you as part of your discovery and Rosario, then you  
2       certainly have cross-examine materials that you can  
3       amply cover in your cross-examination of Detective  
4       Schiraldi.

5               MR. CHAMBERLAIN: I'm not only saying that.  
6       I don't think this detective should be allowed to get  
7       up and talk about things --

8               THE COURT: He's been qualified as an expert.

9               MR. CHAMBERLAIN: I understand, Judge, but  
10      he's talking about the particular evidence. It's not  
11      expertise here. He's talking about --

12              THE COURT: He's talking about cutting tools.  
13      He's an expert in SIB.

14              MR. CHAMBERLAIN: I have no problem with his  
15      talking about cutting tools. I have a problem with his  
16      talking about this particular cutting tool in the  
17      manner in which he's doing it, which we have not gotten  
18      any prior notice of, which in my opinion is confusing  
19      to the jury and should not be allowed.

20              THE COURT: Mr. Biancavilla --

21              MR. CHAMBERLAIN: I think it's important  
22      because this case is dependent upon -- there's no other  
23      evidence of my defendant even being at the scene unless  
24      there's some question about a beer bottle, but I didn't  
25      think that's going to show it. So this is a very

1 crucial piece of evidence, and to allow misleading  
2 evidence to the jury on this --

3 THE COURT: If you think something is  
4 misleading, at that point I would expect you to stand  
5 up and object and I'll make a ruling on that  
6 immediately.

7 MR. CHAMBERLAIN: I did, Judge.

8 THE COURT: At this point you made a  
9 ruling -- excuse me, made an objection and now we're  
10 having argument.

11 MR. CHAMBERLAIN: I would say some of the  
12 other prior testimony was misleading but on the other  
13 tools it didn't really matter that much.

14 THE COURT: Correct me if I'm wrong, but  
15 apparently you had no objection to this demonstration.  
16 Am I incorrect now?

17 MR. CHAMBERLAIN: You're incorrect, yes,  
18 Judge.

19 THE COURT: Tell me at what point I'm  
20 incorrect.

21 MR. CHAMBERLAIN: As to the tool involved I  
22 object.

23 THE COURT: Just so the record is clear, you  
24 had no objection when he was making the cuts with the  
25 other tools.

1 MR. CHAMBERLAIN: That's right.

2 THE COURT: Now he's making the cut with the  
3 Leatherman tool.

4 MR. CHAMBERLAIN: Yes, Judge, but he's not  
5 just making a cut with it. He's demonstrating; he's  
6 talking about it. He's talking about certain  
7 characteristics of it, none of which is in the  
8 material. And it implies to the jury that this cut --  
9 what he's trying to say is that this particular cut on  
10 this particular cord was made by this particular tool.  
11 That's the uniqueness that he's trying to get to. It's  
12 sloppy. They're going to try to show that this cut,  
13 the implication was this cut was made by this tool.

14 THE COURT: That is what the People's witness  
15 is testifying to.

16 MR. CHAMBERLAIN: But that is not what his  
17 report says, Judge.

18 THE COURT: You keep repeating that, Mr.  
19 Chamberlain. You have ample opportunity for  
20 cross-examination. I would think that would be your  
21 first area you're going to cover in cross. Mr.  
22 Biancavilla.

23 MR. BIANCAVILLA: Judge, just so the record  
24 is clear with respect to the evidence that we're  
25 talking about here and Mr. Chamberlain's opportunity to

1 view all the evidence, first of all, Mr. Chamberlain  
2 was given the opportunity to view the ligature. He was  
3 given an opportunity to view the Leatherman tool. He  
4 hired an expert, Nicholas Patrico [phonetic], whom  
5 Detective Schiraldi knows him very well, to examine the  
6 ligature, to examine the Leatherman tool. Nicholas  
7 Patrico was permitted in the Nassau County Police  
8 Department laboratory to perform various tests with the  
9 Leatherman tool and also examine the ligature. I might  
10 add I've never even received a report from Nicholas  
11 Patrico with respect to the examination and  
12 observations that he made regarding the cuts and the  
13 tools and the condition of the tools. And I can tell  
14 you Detective Schiraldi has advised me that Mr. Patrico  
15 made several cuts with the Leatherman tool on several  
16 different types of surfaces. So he was given a full  
17 and fair opportunity to test the Leatherman tool, test  
18 the wire, make any cuts he wanted.

19 In addition, your Honor required me the day  
20 before to also provide Mr. Chamberlain with a list of  
21 witnesses who were going to testify. Mr. Chamberlain  
22 knew that Detective Schiraldi was going to testify  
23 first thing in the morning. He had every opportunity  
24 if he was concerned about Detective Schiraldi's  
25 testimony to have Mr. Patrico here to observe the



1 testimony, and the People never object when one expert  
2 wants to listen to the testimony of another expert.

3 Furthermore, we are under no obligation to  
4 give defendants a notice of any demonstration that the  
5 police are going to do, that the People are going to do  
6 during a trial. We are well within the parameters of  
7 what Richardson's has set forth on demonstrations in  
8 the court. If Mr. Chamberlain believes that Detective  
9 Schiraldi is testifying to anything contrary to his  
10 report that has been generated, then Mr. Chamberlain  
11 can cross-examine him on those particular issues, and  
12 the People are submitting to this Court that this is  
13 just more delay being caused by Mr. Chamberlain.

14 He's been provided with full discovery, was  
15 given an ample opportunity to have his expert here, and  
16 the People would request that we be permitted to  
17 continue with the testimony of Detective Schiraldi at  
18 this time.

19 MR. CHAMBERLAIN: There's a lot in that thing  
20 that has absolutely nothing to do with what this  
21 witness has just testified to. I repeat, Judge, the  
22 prior examination we had was based upon the  
23 examinations we were given, the discovery material we  
24 were given. We were given discovery material that  
25 indicated that this cut was made a certain way. We

1       were given material that indicated what the FBI found.  
2       We were given pictures of it. We did make some tests,  
3       but none of this indicates there was anything unique  
4       about this tool in relation to this wire and that there  
5       was any way you could distinguish this cut from any  
6       other shearing type tool.

7               THE COURT: That, Mr. Chamberlain --

8               MR. CHAMBERLAIN: The implication given to  
9       the jury now is just to the contrary.

10              THE COURT: Mr. Chamberlain, that is  
11       something you're going to cover on cross-examination, I  
12       presume.

13              MR. CHAMBERLAIN: Yes, Judge, I am.

14              THE COURT: So any differences, as I said  
15       before, with respect to his testimony today versus what  
16       you were provided in Rosario material and discovery is  
17       certainly fertile area and you're going to certainly, I  
18       presume, go into it in cross-examination. Therefore,  
19       at this point I see no reason to sustain your  
20       objection, which I'm not exactly sure of other than you  
21       don't want him to talk about the tool itself.

22              Now, as I explained at the bench,  
23       experimentations and demonstrations are permitted, and  
24       I said if the conditions are similar, the evidence  
25       should be submitted. Any differences in circumstances

1 affect only the weight of the evidence and is not a  
2 basis for exclusion, and I'm reading from Richardson's  
3 on evidence, Section 4-219. Now, you're going to have  
4 an ample opportunity to cross-examine, and as I  
5 understand, you have an expert. He certainly could  
6 have been here if he wanted to listen to the testimony.  
7 That was up to you. Now, at this point --

8 MR. CHAMBERLAIN: Unfortunately --

9 THE COURT: I'm sorry?

10 MR. CHAMBERLAIN: Unfortunately, it turns out  
11 his son is graduating from college and he couldn't be  
12 here in any event. I would have liked to have him  
13 here. I did not know that the People would not object.

14 THE COURT: You certainly could have talked  
15 to Mr. Biancavilla, and if there were any problems you  
16 could have made an application to me. You should have  
17 asked him three or four days ago if he had any  
18 objection, and if he did, you could have made your  
19 application to me at that time.

20 MR. CHAMBERLAIN: I don't think he would have  
21 rescheduled his expert to suit my expert's time. He  
22 had to be out of state, from what he told me.

23 THE COURT: I understand that. At this time  
24 I'm going to overrule your objection and let's proceed.  
25 Ready for the jury.

Det. Schiraldi - Direct/Biancavilla

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1 THE COURT OFFICER: Jury entering.

2 THE COURT: Ask Detective Schiraldi to come  
3 back in.

4 (Whereupon, the witness resumed the stand.)

5 (Whereupon, the jury was properly seated in the courtroom.)

6 THE CLERK: Both sides stipulate that all  
7 jurors are present and seated properly?

8 MR. BIANCAVILLA: Yes. May I continue,  
9 Judge?

10 THE COURT: Mr. Chamberlain?

11 MR. CHAMBERLAIN: Yes.

12 THE COURT: Yes, you may.

13 CONT'D DIRECT EXAMINATION

14 BY MR. BIANCAVILLA:

15 Q. Detective, if you could step up in front of the jury  
16 again, please. Detective, before we continue with the manner  
17 in which the Leatherman tool cuts, is the Leatherman tool that  
18 you received, was it -- did it come with a pouch?

19 A. Yes.

20 Q. Could you display for the jury the manner in which  
21 that Leatherman tool was stored so they understand?

22 A. There's a belt loop here so you can wear it on your  
23 belt.

24 Q. Now, before we broke we were talking about -- you  
25 were talking about the sloppiness of that tool. Could you

1 please get into that again and talk about the condition of  
2 that tool?

3 A. Again, when I say sloppy I mean in a way of usage.  
4 As I depicted with a pair of scissors, if they come apart a  
5 bit, they don't cut very well. You have to tighten that up so  
6 that this blade coincides with this blade and goes against the  
7 blade so it cuts the paper. In this tool or implement there's  
8 a little bit of play in there so those jaws don't meet  
9 actually at an exact plane. There's a little bit of wear and  
10 tear in there.

11 Q. You also testified that there are individual  
12 characteristics on that Leatherman tool?

13 A. Yes, as I depicted, there are these small  
14 individualizing characteristics that are present on this  
15 implement or the jaws of this implement from usage. On a  
16 thick monofilament wire such as this, those individualizing  
17 characteristics can be very critical for the simple reason if  
18 there is a hesitation cut where those slight -- just before I  
19 do the actual cutting I pressed lightly and then I moved to  
20 cut the wire, you would see those hesitation cuts. And they  
21 would be good unique individualizing characteristics on which  
22 to base a comparison to individualizing this tool on cutting  
23 something, individualizing. Going back to class  
24 characteristics, flat, well-machined or milled jaws. These  
25 individualizing characteristics are not as apparent or

1     noticeable on a multistrand filament type of wire such as  
2     this.

3             Q.     Why is that, Detective?

4             A.     The small copper filament, you won't see those  
5     hesitation cuts. In most cases small monofilament wire has  
6     insulation wrapped around it, so you won't see that hesitation  
7     type cut.

8                     Now, we just depicted what the --

9             Q.     The wire cutter, have you made the cut with the wire  
10     cutter?

11            A.     I made the cut. Now I'm going to cut this  
12     monofilament copper wire with the Leatherman tool. You'll see  
13     this very square cut pushing, because of the play. You will  
14     see a little tail end coming up. If it was a pure shearing  
15     flat cut with no play, there would probably be just  
16     directional force cross the plane. You might see a small  
17     deposit. With this play you might see more of a deposit.

18                   MR. CHAMBERLAIN: Objection to probably and  
19     might be and all that.

20                   THE COURT: Sustained. The jury should  
21     disregard that.

22            A.     I'm going to cut the monofilament wire. You see a  
23     flat cut, a flat cut with that small tail because of the play  
24     inherent in that used tool. Are we clear on that? Do you  
25     understand what I'm talking about? Flat with a small tail.

1 Now, if I could use the cord, which I have never cut before.

2 MR. BIANCAVILLA: Judge, we're going to open up  
3 People's 43 in evidence.

4 THE COURT: Okay. Mr. Biancavilla, what  
5 exhibit is that?

6 MR. BIANCAVILLA: I'm displaying Exhibit  
7 number 71.

8 MR. CHAMBERLAIN: Judge, for the record,  
9 Judge, I would object to this on the basis of what I've  
10 already indicated, also on the basis that this would be  
11 confusing to the jury.

12 MR. BIANCAVILLA: Judge, I'm going to object  
13 to this being on the record.

14 MR. CHAMBERLAIN: I'd like to voir dire on  
15 what he's about to do.

16 THE COURT: This is not a voir dire  
17 situation. This is already in evidence.

18 MR. CHAMBERLAIN: He's about to do a  
19 demonstration, Judge.

20 THE COURT: Yes, he is. If there's something  
21 you want to say, say it outside the hearing of the  
22 jury. Come forward.

23 (Whereupon, the following colloquy was held at the bench.)

24 THE COURT: Yes, Mr. Chamberlain.

25 MR. CHAMBERLAIN: Based upon our discussion,

1 Judge, it's my understanding that your Honor is  
2 inclined to let this demonstration in, if it was done  
3 under circumstances --

4 THE COURT: Similar, similar circumstances.  
5 I read to you what the law is.

6 MR. CHAMBERLAIN: I want to voir dire this  
7 witness as to whether this is in any way similar to the  
8 microscopic examination of the Leatherman tool and the  
9 photographing microscopically.

10 THE COURT: I think we're talking about  
11 apples and oranges, Mr. Chamberlain. I'm not sure what  
12 you're talking about. All we're talking about now is  
13 the actual cutting of the wire by the Leatherman tool  
14 and if it's -- I will, if you want, I will ask the  
15 detective outside the hearing of the jury as to whether  
16 when he cuts the wire here today is it similar to what  
17 would have been cut back on April 12, 2000.

18 MR. BIANCAVILLA: Judge, I'm going to object  
19 to that. He can do this on cross-examination. And  
20 unless we wrap that cord around somebody's neck and  
21 strangle them to death with the wire, Judge, that's the  
22 only thing that is dissimilar. I think any further  
23 delay in this is being obstructionist. He's delaying  
24 this detective's testimony and every time he interrupts  
25 I'm going to start from the beginning. This is meant



1 to flow naturally. Every time we get to this same  
2 part, Judge, he objects. He did it the last time. Now  
3 he's doing it again.

4 MR. CHAMBERLAIN: I object to those remarks,  
5 Judge. I will say this: He is now putting up the  
6 picture of a wire.

7 THE COURT: Yes, it's in evidence.

8 MR. CHAMBERLAIN: I understand that. It was  
9 microscopically examined, blown up for that purpose,  
10 and then examined, and they did scientific  
11 investigation tests and they issued reports on that.  
12 He is now going to presumably put up a picture of a new  
13 cut, let the jury try to make this comparison --

14 MR. BIANCAVILLA: Absolutely.

15 MR. CHAMBERLAIN: -- here in court, which is  
16 completely improper.

17 MR. BIANCAVILLA: It's not.

18 MR. CHAMBERLAIN: At least you are -- if it  
19 was done under similar conditions.

20 THE COURT: He can testify as an expert as to  
21 a similarity. The jury can't do that. I won't permit  
22 that without the expert testimony. I don't know what  
23 Mr. Biancavilla is going to ask.

24 MR. BIANCAVILLA: The jury can either accept  
25 or reject his opinion.

1 THE COURT: That's right.

2 MR. BIANCAVILLA: It's up to them.

3 THE COURT: Without the expert opinion, I  
4 would strike it. However, if he's going to testify, I  
5 presume -- can I have an offer of proof?

6 MR. BIANCAVILLA: He's going to testify that  
7 this particular cut was made with a shearing type tool.  
8 And I'm going to say, With a reasonable degree of  
9 scientific certainty? No, I can't.

10 MR. CHAMBERLAIN: With a shearing type tool  
11 is consistent. That is not what he's going in to.

12 MR. BIANCAVILLA: That's exactly what I'm  
13 going in to, Mr. Chamberlain. You're wasting time and  
14 you're being an obstructionist.

15 MR. CHAMBERLAIN: I'm not an obstructionist.  
16 That is not what he's going to be testifying to. It's  
17 not a shearing type tool. That's what the report says,  
18 but that's not what he's testifying to.

19 THE COURT: I'm not interested in what the  
20 report says. I'm interested in the testimony from the  
21 witness's mouth.

22 MR. CHAMBERLAIN: The demonstration he's  
23 doing is not under similar conditions.

24 MR. BIANCAVILLA: Similar conditions as to  
25 what?

1 MR. CHAMBERLAIN: It would be perjury if you  
2 ask him.

3 MR. BIANCAVILLA: Similar conditions as to  
4 what, as to the night of the strangulation?

5 THE COURT: No, that he cannot do.

6 MR. BIANCAVILLA: He never cut that cord  
7 before. The photographs that were up there are the  
8 photographs as the cord existed when he examined it.  
9 He has never cut that cord before, so there is no  
10 similar condition to compare it to.

11 THE COURT: Is he going to make a comparison?

12 MR. BIANCAVILLA: He's going to put the cut  
13 end up there that he did in the courtroom and compare  
14 it to the photograph that he took of the cut end when  
15 he examined the cord. And there's nothing improper  
16 about that.

17 THE COURT: I don't see there's anything  
18 improper about that either. I agree with you, Mr.  
19 Biancavilla. I'm going to permit the test. You have  
20 made your record, Mr. Chamberlain. I've heard your  
21 objection. I'm going to overrule your objection.

22 (Whereupon, the proceedings continued in open court.)

23 Q. Please explain to the jury what they're viewing on  
24 the monitor.

25 A. This is, as you saw in that other photograph of the

1 Phonemate, the transformer end of that wire cord that was in  
2 that picture, taken in that picture. We have the power plug  
3 end that's plugged in the phone unit or answering type  
4 machine, this portion here. This was the ligature as cut from  
5 the deceased at the time of autopsy. The medical examiner  
6 banded that together. These are not pertinent to our  
7 conversation at this time. This is the power cord. This is  
8 the power unit that plugs in the phone. This is where the  
9 transformer section, the large piece like this, that is  
10 plugged into the wall once was adhered to. That was cut from  
11 this wire.

12 From my scientific examination of this, my feeling  
13 is it was a lopping type shear from dynamics that this  
14 displayed on what I explained to you before.

15 Q. Detective, that end of the wire that you're holding  
16 in your hand, the photograph that is depicted on the screen,  
17 is that photograph what you photographed at that end of the  
18 wire?

19 A. This photograph, I took these pictures on the  
20 afternoon of April 20, the year 2000, of this end. Since then  
21 it has been repackaged, examined by outside experts and  
22 repackaged in this bag.

23 Q. Did you use some type of microscopic device to  
24 photograph that end of the wire?

25 A. This is a stereo light microscope. As I said

1 before, this is a magnifying glass -- it allows you to see 3D,  
2 good depth perception -- with a photographic unit on it, 35  
3 millimeter film. Now, see, the picture themselves, I have a  
4 millimeter scale. All good forensic photography is done with  
5 a scale. You assume it is one to one. You can juxtaposition  
6 the ruler to the actual item that you are photographing so you  
7 know the scale is there. If I held up a millimeter ruler and  
8 you blew up it, I could tell you the exact dimensions. That  
9 one is about four millimeters. Every forensic photo should  
10 have a scale.

11 THE COURT: Detective, what exhibit are you  
12 showing the jury?

13 THE WITNESS: Exhibit 71, People's Exhibit  
14 71.

15 Q. Can you just briefly describe for the jury what  
16 type of wire they're viewing on the TV and the type of wire  
17 you're holding in your hand?

18 A. This is a dual wire. It has a polarized side.  
19 That's the white and the black. It's a polarized wire,  
20 showing the conductivity, how the electricity flows through  
21 the wire. This is a power type wire. Then I took that off  
22 the computer. I know from looking at this wire it is similar  
23 to that Phonemate phone that we had in that picture. This is  
24 that type of wire used with those type of transformers.  
25 Again, the transformer is not present. I don't know where the

1 transformer is. I never saw the transformer. But I did  
2 document exactly what I saw on this end, pertinent end,  
3 because that was cut by the medical examiner, and I  
4 photographed it at that time.

5 Q. Now, that wire has multiple braids?

6 A. Well, there are two -- there's multiple filaments  
7 inside each of the lobes of this wire. As you can see here  
8 there's multiple filaments inside each of the lobes, polarized  
9 lobes, one black, one white, multiple filaments of wire in  
10 multiple lobes, two lobes.

11 Q. Now, is multiple filament wire conducive to  
12 observing individual characteristics of a particular type of  
13 tool?

14 A. In this case, no. Most cases not. Because single  
15 filaments -- they give way between one another and push among  
16 themselves, those thin or that type of jaw wear is not  
17 really -- does not really leave an impression on multifilament  
18 wire. On single filament, that monofilament large wire, it  
19 leaves an impression if there's hesitation.

20 Q. Okay.

21 A. So what this picture depicts is, again, that  
22 shearing force, that angulation that I depicted in my sketches  
23 and what I did an example of on those other items. You see  
24 there's one blade laying here. The shearing effects pushed  
25 the rest of the filaments over to one side. It's hard to

1 visualize it. Could I pass this amongst the jury?

2 THE COURT: You want to publish that  
3 photograph, Mr. Biancavilla?

4 MR. BIANCAVILLA: That would be photograph  
5 number 72. Could he just display this to the jury?

6 THE COURT: If you like. While we publish it  
7 you can't testify, Detective.

8 THE WITNESS: I'm just going to hold it up.

9 THE COURT: You're going to hold it up instead.

10 THE WITNESS: I'm going to hold it up so they  
11 can all see.

12 A. There is a little bit of flattening on some of the  
13 filaments. They're round filaments but several of them on  
14 different lobes are flattened. Can you see that? On this top  
15 one they're very, very prominent. Round copper wire flattened  
16 slightly on the top, multifilament. We understand that?

17 Again, now, I will remove a section of this wire.  
18 The rest is no longer needed. I will cut it first with a pair  
19 of lineman dikes. There's that apex type cut. You see a  
20 small raised ridge in the middle of that, the meeting jaws at  
21 a 90-degree angle or 180-degree angle. Squeeze the wire,  
22 small apex type cut.

23 Same piece of wire, I'm going to loop it with a  
24 knife blade, the dynamics of me putting a loop in it with the  
25 force of the knife. You see that, the looping of the wire

1 with a slice through it? Okay?

2 THE WITNESS: I'm going to mark your court up  
3 again, Judge.

4 A. One directional force against a very hard  
5 substrate such as the wood, very flat. There's no hesitation  
6 here because it's just a soft multifilament wire, much softer  
7 than the single filament wire. No apex, no curvature.

8 And last, the Leatherman tool. Place it in the  
9 jaws, and I have to pull because it's not cutting. We have  
10 that curvature. We have slight flattening of the multi copper  
11 filaments similar to what is depicted here. You'll see  
12 another dynamic that is prevalent in this cut and in this  
13 photograph opposed to the other cuts that I made with the wire  
14 cutter and the knife: There's that force not only when you're  
15 squeezing and cutting wire, but I have to wiggle the wire out.  
16 Hence, with the other cuts with the knife and the wire cutter  
17 it was very flat. You saw mostly insulation and very little  
18 bit of the apex when I cut with the wire cutter and almost  
19 none when I cut it with the knife. The dynamic of me having  
20 to pull pulled the insulation back, extruded the copper wire  
21 forward.

22 Again, this knife is capable of making the cut  
23 depicted. This Leatherman is capable of making the cut that  
24 was depicted in the original way that I found the cord.

25 Q. You can be seated, Detective, and bring your tools



1 back up there with you. You know, leave them there for now.

2 Now, Detective, just so it's clear to the jury, this  
3 Leatherman tool that you just demonstrated to them, is that  
4 the only type of tool that could have made that shearing type  
5 cut on that particular wire?

6 A. The only type tool? Shearing type effect tool.

7 Q. Shearing type tool?

8 A. Not individually that tool.

9 Q. You can't tell this jury that particular tool made  
10 that particular cut?

11 A. Not to the exclusion of all others similar to it.

12 Q. So in other words, you're talking about the type of  
13 cut, the shearing action of the cut?

14 A. That's correct.

15 Q. It was made with that type of shearing action?

16 A. That's correct. Something that had that play in it  
17 to allow those multifilaments to be flattened.

18 Q. Can you tell this jury within a reasonable degree of  
19 scientific certainty that that cord was not cut with a knife?

20 A. Definitely not.

21 Q. That that cord was not cut with dikes?

22 A. Definitely not.

23 Q. That that cord was not cut with wire cutters?

24 A. Definitely not.

25 Q. And that that cord was not cut with a scissor?

1 A. That's correct.

2 MR. BIANCAVILLA: I have nothing further for  
3 Detective Schiraldi, other than -- let me just check to  
4 make sure I've offered everything into evidence.

5 I believe I've offered everything. I have no  
6 further questions for Detective Schiraldi.

7 THE COURT: Mr. Chamberlain.

8 MR. CHAMBERLAIN: Thank you, Judge.

9 MR. BIANCAVILLA: Excuse me, Judge, before  
10 Mr. Chamberlain starts, we marked these two drawings,  
11 People's Exhibit 78 and People's Exhibit 79 for  
12 identification. We would offer those too.

13 THE COURT: Any objection?

14 MR. CHAMBERLAIN: Yes, Judge. I think  
15 they're confusing and improper based on my prior  
16 objection.

17 THE COURT: Can I see them, please.

18 I'm going to sustain the objection.

19 MR. BIANCAVILLA: Judge, can we approach  
20 briefly, please.

21 THE COURT: Yes.

22 (Whereupon, the following colloquy was held at the bench.)

23 MR. BIANCAVILLA: My question is for Mr.  
24 Chamberlain. What's the basis for the objection?

25 MR. CHAMBERLAIN: I already stated it, Judge.

1 THE COURT: Well, now we're up here, Mr.  
2 Chamberlain.

3 MR. CHAMBERLAIN: I said I thought it was  
4 based upon my prior objection and also it's confusing  
5 to the jury. Your Honor just sustained it, I thought.

6 THE COURT: I did and I did find it confusing  
7 to the jury.

8 MR. BIANCAVILLA: Judge, what I'm saying is  
9 that if -- first of all, the jury has already seen it.  
10 It's been viewed. It is actually something that the  
11 detective used during the course of his presentation in  
12 front of the jury. If they have any questions  
13 regarding the drawings, his testimony will be read back  
14 and my problem is that how can you exclude something  
15 that they've seen during the course of this detective's  
16 testimony?

17 THE COURT: That's true. I didn't think of  
18 it in that light.

19 MR. CHAMBERLAIN: If it's confusing, it's  
20 confusing.

21 THE COURT: It may be confusing to us as lay  
22 people. What can be done is the jury can ask for the  
23 detective's testimony be read back with respect to any  
24 particular segment of the drawing itself. Now, as you  
25 look at in a vacuum, I agree with you it is confusing.

25 | A. A report?

1 Q. Of your investigation.

2 A. To the investigating detective.

3 Q. And who was that?

4 A. Jack McHugh.

5 Q. And the procedure, as far as how you conduct  
6 yourself scientifically, you make investigations of materials  
7 that are submitted to you?

8 MR. BIANCAVILLA: Objection.

9 A. Yes.

10 THE COURT: I'll permit him to ask.

11 MR. BIANCAVILLA: Judge, I'm going to ask to  
12 approach then.

13 THE COURT: If he's laying a little bit of a  
14 foundation.

15 MR. BIANCAVILLA: Procedure is not the  
16 subject of cross-examination, Judge.

17 MR. CHAMBERLAIN: He went into this on direct  
18 at the beginning of his direct, Judge. I don't  
19 understand why it's not proper.

20 THE COURT: I'll allow you, Mr. Chamberlain,  
21 to ask a couple of questions with respect to  
22 foundation.

23 MR. CHAMBERLAIN: That's all I need, Judge.

24 A. Could you rephrase the question?

25 MR. CHAMBERLAIN: Would you read the question

1 back?

2 (Whereupon, the record was read back.)

3 A. Yes, all the time.

4 Q. And as part of that examination you take photographs  
5 sometimes?

6 A. Yes, most cases, yes, but not all.

7 Q. You look at the evidence in microscopes?

8 A. That's correct.

9 Q. And sometimes you take photographs through the  
10 microscope or blowups?

11 A. That's correct, yes.

12 Q. You use different types of microscopes?

13 A. Yes.

14 Q. And do you record your findings as you go along? Is  
15 that part of the scientific protocol, that you make immediate  
16 recordings of what your findings are?

17 A. Most certainly.

18 Q. Is that most certainly?

19 A. Yes, most certainly.

20 Q. And the reason for that would be so you don't forget  
21 it and confuse it with some other matter; is that correct?

22 A. That's correct, yes.

23 Q. And we already started -- we started talking about  
24 your notes here, Detective. There were many other things that  
25 you did other than what you testified to this morning; is that

1 correct?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: That's kind of a nebulous  
4 question. Perhaps you can get more specific, Mr.  
5 Chamberlain.

6 Q. Over and above the examination of the hairs and  
7 fibers, did you do anything else in this case?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Are we talking about other  
10 scientific tests, Mr. Chamberlain?

11 MR. CHAMBERLAIN: Absolutely.

12 THE COURT: I'll permit that.

13 A. I don't really understand how I could understand  
14 that in its context. Please rephrase or repeat it for me,  
15 please.

16 Q. Well, the hairs, in your examination of the hairs  
17 that you referred to, did you make notes as to their length,  
18 their diameter and so forth?

19 A. Oh, yes, that's all in my notes.

20 Q. So you examined them microscopically?

21 A. Yes, again, with a stereo light microscope, then a  
22 compound light microscope, polarized light microscope that  
23 allows you to see thickness and differences, and a comparison  
24 light microscope to, again, to compare these hairs to the  
25 known standard of the deceased. It is a system of microscopes

1 that allows you to look in one set of oculars and see a split  
2 screen, if you will, of two fields of view. The known  
3 inquiry, the known sample to the right I use as my convention,  
4 and the question always being on the left, that's how I do  
5 mine.

6 Q. Those were examined on what day, could you tell me?

7 A. Yes, sure. 4/26 subsequent to the time of 1320,  
8 which is 1:20 in the afternoon.

9 Q. I want to direct your attention to your notes back  
10 to 4/20. Did you examine the wire, the copper wire, that you  
11 have exhibited to the jury, the ligature wire in this case?

12 A. In the lower right there will be a number, it'll be  
13 10 of 20 or 10 of 80. What page are you looking at?

14 Q. I believe it's eight, Detective, lower in the right.

15 A. Yes, that's depicted right there, yes.

16 Q. Would you read your notes with respect to that  
17 examination of that wire, please.

18 A. 4/20 --

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q. What did your examination of the wire on that day  
22 show, Detective?

23 THE WITNESS: Could I read from my notes,  
24 Judge?

25 THE COURT: You can use your notes to refresh



1           your recollection, Detective. You can't read from  
2           them.

3           A.    Okay. A cursory look under the stereo light  
4           microscope led me to believe that it was cut with a sharp  
5           implement, not like wire cutters that sandwich or apex the  
6           wire, but with directional force.

7           Q.    Well, Detective, your notes don't indicate anything  
8           about a cursory look there, do they?

9                       MR. BIANCAVILLA: Objection.

10                      THE COURT: No, I'll permit that.

11           Q.    Did you make a finding on that day that the cord,  
12           ligature cord, cut was made with a sharp instrument not like  
13           wire cutters that sandwich the wire but more one directional  
14           force, yes or no?

15           A.    He read from my notes. Yes.

16           Q.    Now, that was your only note concerning that wire  
17           cord at that time; is that correct?

18           A.    That's correct, yes.

19           Q.    Now, after that was that wire cord sent out by your  
20           laboratory anyplace?

21           A.    Yes, it was.

22           Q.    And where was it sent?

23           A.    At the time I was very busy with other homicides and  
24           rapes. It was told -- I was told that because of my workload  
25           it was being sent to the FBI in Washington D.C.

1 Q. I didn't ask you why it was sent. Because you were  
2 too busy, is that it?

3 A. I was working other cases.

4 Q. You were fully competent to check the wire yourself  
5 as an expert on tools?

6 A. Yes, that's correct.

7 Q. But because you were busy it was sent to the FBI?

8 A. That's correct.

9 Q. When was it sent to the FBI?

10 THE WITNESS: I have to look at my notes,  
11 Judge.

12 THE COURT: Sure, you can refresh your  
13 recollection.

14 A. It was sent out Federal Express on 6/29 of the  
15 year 2000.

16 Q. 6/29?

17 A. That's correct.

18 Q. Was there a transmittal letter dated May 29 from the  
19 SIB to the FBI?

20 A. I do know there was a letter.

21 Q. Maybe I can save you some time here, Detective.

22 MR. BIANCAVILLA: Which document are you  
23 referring, to Mr. Chamberlain? Give me a number.

24 MR. CHAMBERLAIN: I have a page out of the  
25 Rosario material. I don't know.

1 MR. BIANCAVILLA: What exhibit was the  
2 Rosario material?

3 MR. CHAMBERLAIN: I don't know. It was part  
4 of the Rosario material that was provided.

5 Q. Let me show this to you.

6 THE COURT: You want that marked, Mr.  
7 Chamberlain?

8 MR. CHAMBERLAIN: Yes.

9 (Whereupon, Defendant's Exhibit G was marked for  
10 identification.)

11 MR. BIANCAVILLA: Can I see the document?

12 THE COURT: You may.

13 MR. CHAMBERLAIN: Let me hold my question on  
14 that. I want to establish a little bit of a time line  
15 here.

16 Q. Detective, when you examined the power cord on, I  
17 think you said it was 4/20?

18 A. That's correct, yes.

19 Q. You examined it microscopically and took these  
20 pictures?

21 A. That's correct.

22 Q. Of the cut end. At that time this defendant had not  
23 been arrested yet; is that correct?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Sustained.

1 Q. Do you know if this defendant had been arrested?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained.

4 A. No, I do not.

5 Q. Detective, you indicated on direct that you first  
6 got the power -- the Leatherman tool in April. I'm sorry. In  
7 November. What date?

8 A. November 8.

9 Q. November 8 you received the tool. Isn't it a fact  
10 that that tool had been received shortly after the defendant's  
11 arrest on May 3, 2000?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained.

14 Q. Was not that tool sent with the cord to the FBI on  
15 either May 29 or June 29?

16 MR. BIANCAVILLA: Objection.

17 THE COURT: I'll permit that. Overruled.

18 A. I wrote a letter. I contacted the FBI laboratory  
19 and I was on vacation. That's why me myself I did not send it  
20 out, but we did contact them. We were in the midst of finding  
21 out who was going to examine this item.

22 MR. CHAMBERLAIN: May I have that letter,  
23 please.

24 MR. BIANCAVILLA: Sure.

25 Q. You say you wrote a letter. Is that the

1 transmittal letter?

2 A. This is the letter, yes.

3 Q. Would you tell the Judge and the jury what was sent  
4 on that date with that transmittal letter?

5 A. There was the wire and the Leatherman type tool.

6 Q. And the tool?

7 A. That's correct.

8 Q. What was the request made of the FBI?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q. What was the request to the FBI?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained.

14 Q. It was sent for what purpose?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained.

17 Q. Was there --

18 MR. CHAMBERLAIN: May I have the purpose of the  
19 objection, Judge? I'm not sure I understand it.

20 THE COURT: Mr. Chamberlain, I don't have to  
21 give you a reason for my -- I'm sustaining the  
22 objection. It's not a proper question. I'm sustaining  
23 it for form, Mr. Chamberlain.

24 Q. Was the FBI informed of the reason for the request  
25 for their examination of this tool and that cord?

1 MR. BIANCAVILLA: Objection.

2 THE COURT: Mr. Chamberlain, it's not a  
3 proper question. Sustained. There's another way to  
4 get it in.

5 Q. Was it common for you to refer items for  
6 examination, you meaning the Scientific Investigation Bureau,  
7 to other agencies?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: I'll permit that.

10 MR. BIANCAVILLA: Judge, I'm going to ask to  
11 approach, please.

12 THE COURT: Come forward. Step down,  
13 Detective.

14 (Whereupon, the witness exited the courtroom.)

15 (Whereupon, the following colloquy was held at the bench.)

16 THE COURT: Yes, Mr. Biancavilla.

17 MR. BIANCAVILLA: Judge, what is common, what  
18 is not common, what is procedure, what is not  
19 procedure, is irrelevant. The only thing that's  
20 relevant during the criminal trial is what was done in  
21 a particular case. What is common is not relevant and  
22 is objectionable, and all we're having here is what is  
23 common, what's not common, what your purpose is, what  
24 your procedure is. It's all irrelevant, Judge. What  
25 was done in another case and another time is not

1 relevant to this trial. That is my point of my  
2 objection. That's why I objected when he was asking  
3 questions about procedure, and that's why I'm objecting  
4 at this point when he's asking questions about what's  
5 common and what's not common.

6 THE COURT: Mr. Chamberlain.

7 MR. CHAMBERLAIN: Foundation questions,  
8 Judge, as to the procedures normally followed.

9 THE COURT: I overruled the objection with  
10 respect to the procedures. Now we're concerned about  
11 what is common for the detective to do. On reflection,  
12 it's an improper question. However, if you want to ask  
13 in this particular case what did he do is certainly a  
14 legitimate question and area that you can go into.  
15 What he did on other occasions has no relevance to what  
16 he did, because it could have been completely  
17 different. It could have been the same. Who knows?

18 MR. CHAMBERLAIN: It's a foundation question  
19 for other questions.

20 THE COURT: But it's not a proper foundation  
21 question.

22 MR. CHAMBERLAIN: Fine, Judge.

23 (Whereupon, the proceedings continued in open court.)

24 Q. In this case, this material, the Leatherman tool and  
25 the power cord were transmitted to the FBI at the end of May

1 or in June of 2000; is that correct?

2 A. That's correct.

3 Q. And in the normal course of business of the police  
4 department during when such a transmission is made or such a  
5 transmittal is made, a cover letter or some request as to what  
6 is required is provided; is that correct?

7 MR. BIANCAVILLA: Objection.

8 THE COURT: Normal course is not a legitimate  
9 question. What was done in this situation would be a  
10 legitimate question.

11 Q. Was it done in this case?

12 A. Was there a cover letter sent with the item?

13 Q. Yes.

14 A. There was, yes.

15 Q. And that cover, was that cover letter a record made  
16 in the regular course of business of the police department?

17 A. Well, I called them and I informed them --

18 MR. BIANCAVILLA: Objection, not responsive.

19 THE COURT: Yeah, you have to respond to the  
20 question, Detective.

21 Q. Was it in the regular course of business that that  
22 cover letter was made?

23 A. Yeah.

24 Q. And was it the regular course of business to make  
25 such a record?



1 A. It's not a regular course of business that we --

2 MR. BIANCAVILLA: Judge, he's answered the  
3 question.

4 MR. CHAMBERLAIN: No, he hasn't. He was in  
5 the middle of his sentence.

6 THE COURT: Have you finished your response?

7 THE WITNESS: No.

8 THE COURT: Go ahead.

9 A. It's not the regular course of business that I  
10 send things to the FBI.

11 Q. But when you do, is it the regular course of  
12 business of the police department to make a record of that  
13 transmittal?

14 A. Well, if we ask an individual to do something, as we  
15 are --

16 MR. BIANCAVILLA: Judge, I'm going to object.  
17 It's not responsive to the question.

18 THE COURT: I think you have to respond with  
19 a yes or no, Detective.

20 A. I can't answer that with a yes or no.

21 Q. Well, when you send material to the FBI on the  
22 occasions when you do, is it the regular course of business of  
23 the police department to send -- to make a record and send a  
24 request along with that?

25 MR. BIANCAVILLA: Objection.

1 A. Yes.

2 THE COURT: I'll let the answer stand.

3 Q. And was the -- that letter, letter of transmittal  
4 made, that record made, at or about the time of the event or  
5 within a reasonable time thereafter?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: No, overruled.

8 Q. Was the letter sent with the material at the same  
9 time?

10 A. Well, we had to contact the FBI.

11 MR. BIANCAVILLA: Objection, not responsive.

12 THE COURT: Sustained.

13 A. We get a 301 and 106 that asks you what you're  
14 submitting this piece of evidence for. So I called the FBI  
15 telling them that I was busy with other things and we were  
16 thinking about sending this to the FBI.

17 Q. Then the record, the letter of transmittal, was sent  
18 at the time you sent the material; is that right?

19 A. No. I called up and we sent the letter at that time  
20 and we spoke to the FBI on the phone at the time, May 29 or  
21 thereabouts and said they could do it. We formulated the  
22 letter and then we sent the evidence.

23 Q. Within a reasonable period of time?

24 A. That's correct.

25 MR. CHAMBERLAIN: I offer that in evidence.

1 THE COURT: Any objection, Mr. Biancavilla?

2 MR. BIANCAVILLA: Yes, Judge, and I'll ask to  
3 approach.

4 THE COURT: Come forward.

5 (Whereupon, the following colloquy was held at the bench.)

6 THE COURT: Mr. Chamberlain, I understand from  
7 your questioning that you're attempting to lay a  
8 foundation to submit a business record. Now we have  
9 Mr. Biancavilla.

10 MR. BIANCAVILLA: Objection. A letter is not  
11 a business record. The proper foundation for a  
12 business record is is that record kept in the regular  
13 course of business of the Nassau County Police  
14 Department? Is it the regular course of business of  
15 the Nassau County Police Department to keep such  
16 records? Was the information placed therein at or  
17 about the time when the events depicted therein were  
18 completed?

19 THE COURT: Can I see the letter, please.

20 MR. BIANCAVILLA: That is a business record.  
21 This is a request to do something. That is not a  
22 business record.

23 MR. CHAMBERLAIN: Mr. Biancavilla --

24 THE COURT: I'd like to read the letter.

25 MR. CHAMBERLAIN: Mr. Biancavilla, Judge, is

1       contradicting what his witness just testified to. He  
2       testified that it is a regular course of business when  
3       they transmit evidence to another agency, to the FBI,  
4       to send a letter.

5               THE COURT: Let me read to you what the  
6       requirements are for a business record: CPLR 4518(a)  
7       requires the following factual foundation: First, that  
8       the record be made in the regular course of business,  
9       essentially, that it reflect a routine, regularly  
10      conducted business activity and that it be needed and  
11      relied on in the performance of functions of the  
12      business. Secondly, that it be the regular course of  
13      such business to make the record, a double requirement  
14      of regularity, essentially, that the record be made  
15      pursuant to established procedure for the routine,  
16      habitual, systematic making of such a record. And,  
17      third, that the record be made at or about the time of  
18      the event being recorded, essentially, that  
19      recollection be fairly accurate and the habit or  
20      routine of making the entries assured.

21             This isn't an 85A or 79, Mr. Chamberlain --

22             MR. CHAMBERLAIN: I'm aware of that, Judge.

23             THE COURT: -- where the police department  
24      made records. This is a correspondence that may or may  
25      not be used to send information to another agency. As

1 a matter of fact, the detective says that he even  
2 called the FBI. I don't even know if the letter was  
3 made contemporaneously with the sending. You're all  
4 over the place here.

5 MR. CHAMBERLAIN: I understand what your  
6 Honor is saying, but I think that even if he called  
7 before, if in fact it's a regular -- there are records  
8 and records; some are routine all the time and others  
9 are less frequent but are there whenever they do  
10 certain things. This would be a transmittal letter.

11 THE COURT: There was no testimony from the  
12 detective that it was a regular routine that they  
13 always sent a cover letter every time they sent  
14 something to the FBI or another agency. Apparently  
15 they call people; sometimes they don't. As a matter of  
16 fact, there is -- correct me if I'm wrong, I didn't  
17 hear anything in the record.

18 MR. CHAMBERLAIN: I thought he did. I'll go  
19 into that if you want.

20 MR. BIANCAVILLA: I would just like to add --

21 MR. CHAMBERLAIN: I don't think it has to be  
22 all the time, so long as it's done whenever they do  
23 something.

24 THE COURT: Mr. Chamberlain, the foundation  
25 has to be met pursuant to the CPLR, pursuant to

1 Richardson's, which is 8-305. There is a foundational  
2 requirement. Now, this is not a record that's made in  
3 the regular course of its business.

4 MR. BIANCAVILLA: It's a letter, Judge.

5 THE COURT: This is a letter.

6 MR. BIANCAVILLA: We might as well try this  
7 case on paper. If you're going to let that in, you  
8 might as well let in every piece of paper that comes in  
9 the courtroom.

10 THE COURT: I don't agree with you, Mr.  
11 Chamberlain. That is not a record that's made in the  
12 regular course of business. This is a letter sent by  
13 Detective Ryan, who isn't even this detective, to the  
14 director of the FBI.

15 MR. CHAMBERLAIN: I think he said he prepared  
16 the letter. Ryan is --

17 THE COURT: I'll read it. It says sincerely  
18 Detective Sergeant Dennis Ryan. He is not Detective  
19 Sergeant Ryan.

20 MR. CHAMBERLAIN: I think he testified he  
21 prepared the letter and apparently it was signed by his  
22 chief Ryan, that's all.

23 THE COURT: There's other ways you can get in  
24 the information. I'm not going to tell you how to try  
25 your case but that's not a business record, not

1 encompassed within the business record rule.

2 MR. CHAMBERLAIN: Respectfully except.

3 THE COURT: You have an exception.

4 MR. CHAMBERLAIN: You want me to desist on  
5 trying to lay a foundation for this at this point?

6 MR. BIANCAVILLA: Judge, I'm tired of  
7 objecting.

8 THE COURT: I'm not going to tell you to do  
9 anything. I'm telling you the letter is not a proper  
10 record as encompassed by a business record rule.

11 (Whereupon, the proceedings continued in open court.)

12 Q. Detective, are you aware -- you indicated there were  
13 telephone conversations between you and the FBI at about the  
14 time this letter was sent?

15 A. I called them.

16 Q. Did you advise them that the evidence being sent had  
17 not been examined by anyone previously?

18 A. Did I advise them of that? I said at that time I  
19 wouldn't be able to get to it and I'm sending it down to you.  
20 I opened it, I examined it, photographed it and I packaged it  
21 to be sent down there, yes.

22 Q. The question was, Detective, did you advise them  
23 that the evidence that was being sent to them for testing had  
24 not been examined by anyone prior to that?

25 A. I just said that after I photographed it, I told

1     them that no one examined it and I packaged it and sent it to  
2     them.

3           Q.     Had you examined it on May 20? Had you not only  
4     examined it microscopically, taken pictures, but come to a  
5     finding as to the one directional force?

6           A.     I came to that decision on April 20.

7           Q.     April 20. Did you tell that to the FBI?

8           A.     That was just in my notes. I didn't do any further  
9     testing at that time. I didn't do any test cuts or anything  
10    of that nature. This is an observation looking under the  
11    stereo microscope, seeing force, knowing the dynamics of cuts,  
12    and in the course of my job I made quick cursory notes and  
13    examined that without doing any test cuts.

14          Q.     What other tests would you do, Detective, other than  
15    examine it with a microscope, blow up the pictures, examine  
16    them? Isn't that what you normally do in the microscopic  
17    examination of a cut cord?

18                   MR. BIANCAVILLA: Objection.

19                   THE COURT: No, in this case.

20          Q.     Detective?

21                   THE COURT: One moment. In this case, as long  
22    as it's with respect to this case I will permit the  
23    question to be asked.

24          A.     Could you read that back to me, please.

25                   (Whereupon, the record was read back.)



1 MR. CHAMBERLAIN: I'll withdraw the question.

2 Let me go on here.

3 Q. Detective, you say you came to the conclusion that  
4 it was a one dimensional force cut?

5 A. I never said one dimension.

6 Q. You said one direction?

7 A. Direction.

8 Q. Thank you. That would be a cut you exhibited to the  
9 jury with a straight knife; is that correct?

10 A. A straight knife or something moving while the wire  
11 is stationary, moving across that wire.

12 Q. At an angle?

13 A. At an angle, perpendicular, any type of one  
14 directional force where the wire remains stationary and  
15 something is pushing or cutting into it.

16 MR. BIANCAVILLA: Displaying People's Exhibit  
17 72.

18 MR. CHAMBERLAIN: Thank you.

19 Q. Now, that's a blowup of the microscopic  
20 examination you had of that cord on May 20; is that right?

21 THE COURT: Detective, can you see it from  
22 here?

23 THE WITNESS: May I get up?

24 THE COURT: Yes, of course.

25 A. When I opened the bag this is how the wire looked,

1 and I photographed it on April 20 subsequent to 1300 hours or  
2 1 o'clock in the afternoon.

3 Q. That's a blowup of it?

4 A. That's correct.

5 Q. When you viewed that blowup you came to the  
6 conclusion at that time that that cord was cut with a one  
7 directional force or a knife?

8 A. One directional force.

9 Q. Which would be a knife?

10 A. I said a sharp implement. I didn't say a knife. A  
11 knife has one blade.

12 Q. Go ahead, Detective. I didn't mean to interrupt.

13 A. A one directional force, something, again, pushed.  
14 There was a substrate or another bar there or a flat surface.  
15 That direction or force was pushed into that wire. That's  
16 what I say in my notes.

17 Q. Would that be cutting against something like a wood  
18 surface?

19 A. Something needs to be a substrate or fulcrum where  
20 it has to be leaned against to be pushed in to be cut.

21 Q. So when that was sent to the FBI did you tell them  
22 of that conclusion?

23 A. No, I did not.

24 Q. Do you recall who you discussed this with at the  
25 FBI?

25 THE COURT: Sustained. He can't read from

1 the report, Mr. Chamberlain. It's not in evidence.

2 Q. Were you in contact with the FBI at any time prior  
3 to receiving that written report?

4 A. Subsequent to April 20?

5 Q. Yes, between April 20 and the date you got the  
6 report.

7 A. I spoke to them April 20, told them I was sending it  
8 down. They sent me back the evidence and a report. I never  
9 had any conversations with any of the analysts or any other  
10 personnel down there subsequent to the initial contact on or  
11 about -- subsequent to April 20 and speaking to them between  
12 that date and May 29.

13 Q. Now, in addition to the request for the type of cut  
14 when you sent that to the FBI, you were requesting some  
15 information about a little black dot that you found on the  
16 power tool -- taken from the Leatherman tool taken from the  
17 defendant when he was arrested?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: I'll permit that. Overruled.

20 A. There was, yes. Since I was sending the cord down  
21 there with the Leatherman tool -- I didn't touch the  
22 Leatherman tool at that time. I sent it down to the FBI  
23 packaged with the cord.

24 Q. But you specifically asked the FBI to examine a  
25 little piece of black material that you had found on that

1 tool, did you not?

2 A. Not that I found, no.

3 Q. No?

4 A. Somebody examined it and opened it and it was there  
5 to the naked eye.

6 Q. Did you ask that the black polymer-like material on  
7 the tool be compared with the black wire covering of the cord?

8 A. Yes, any foreign substance adhering to a metal  
9 object, I would inquire to what that would be.

10 Q. So you were asking not only for the tool mark  
11 comparison on the tool that may have cut that wire but you  
12 were also asking for a comparison of that little black dot  
13 found on the Leatherman tool taken from the defendant?

14 A. That's correct.

15 Q. With the cord?

16 A. Yes, to the cord.

17 Q. Prior to that time did you make any comparison  
18 between the two?

19 A. No, I did not.

20 Q. So that you did examine the cut end but you did not  
21 make an examination before material was sent down to the FBI  
22 of a black dot versus the cord, the black dot taken from the  
23 tool obtained from the defendant on his arrest and the cord?

24 A. No.

25 Q. Were you fully capable of doing that in your

1 laboratory, Detective?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Overruled.

4 A. Of doing the comparative work?

5 Q. Yes.

6 A. Yes, on the black dot.

7 Q. Was there any reason why your office didn't do that,  
8 SIB didn't do that?

9 A. The reason, again, as I stated, I was involved with  
10 other homicides and rapes, and this needed to be done in a  
11 timely fashion. And there was other cases that needed to be  
12 done prior to this one and I was working on those. It was a  
13 decision from the homicide detective that we send it out to  
14 get it done forthwith.

15 Q. And at no time, Detective -- withdrawn.

16 Just to make this certain, when the material was  
17 sent to the FBI on May 29, 2000, was your name given and phone  
18 number given for contact for the FBI, do you know?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q. Do you know if -- you're certain, however, there  
22 was no contact between now and the FBI between the time of the  
23 transmittal of this material and the time you received the  
24 written report from the FBI?

25 A. Certain as to?

1 Q. Any contact, your calling back and forth, what about  
2 this, I found a one directional, it might be a shearing, a  
3 different type cut or anything like that?

4 A. When I first called them up?

5 Q. Between April 20 --

6 A. When I first called up to get the FBI, advise them  
7 of what I was sending down, I might have mentioned that in my  
8 notes there was a shearing type effect that I feel -- or one  
9 directional force. That's all I said. I never -- at that  
10 time I never did any test cuts or any type of comparative  
11 work.

12 Q. Detective, that's not what I asked you. I'm not  
13 asking you what might have been. I'm asking you was there any  
14 contact after that material was sent down?

15 A. I can't remember exactly.

16 Q. You've already testified that when it was sent down  
17 they were told no, the evidence had not been examined by  
18 anyone.

19 MR. BIANCAVILLA: Objection.

20 THE COURT: First of all, there's a proper  
21 way to do that, Mr. Chamberlain. Are you reading from  
22 a document?

23 MR. CHAMBERLAIN: No, Judge, I'm not. I'm  
24 paraphrasing but not reading from the document.

25 THE COURT: That's not the proper way to do

1 it.

2 Q. Didn't you testify just a little while ago that  
3 when the evidence was sent down the FBI was told it had not  
4 been examined by anyone?

5 MR. BIANCAVILLA: Objection.

6 A. That is not what I said.

7 MR. BIANCAVILLA: I'll withdraw the objection,  
8 Judge.

9 Q. I'm going to show you this document, Defendant's  
10 G, and ask you if it refreshes your recollection as to what  
11 the FBI was told as to any prior examination of the evidence.

12 MR. BIANCAVILLA: Judge, again, I'm going to  
13 object. I need to approach on that.

14 THE COURT: All right, wait. Ladies and  
15 gentlemen, at this point we're going to break for  
16 lunch. I'll ask you to be back here at 2:30. We have  
17 some other court business to take care of. Do not  
18 discuss this case among yourselves or with anyone else.  
19 Keep an open mind. Do not form or express any opinions  
20 until the entire case has been completed. Do not read  
21 or listen to any accounts of this case should it be  
22 reported in the media. Don't visit or view any place  
23 or premises that may have been mentioned, and do not  
24 permit any party to discuss this case with you. If  
25 anyone attempts to do so, you must promptly report to



1 the Court any violation thereof. Have a nice lunch.  
2 We will see you at 2:30.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Detective, can you step down,  
5 please.

6 (Whereupon, the witness exited the courtroom.)

7 THE COURT: Mr. Biancavilla.

8 MR. BIANCAVILLA: Judge, it's that same  
9 letter. That is not even written by Detective  
10 Schiraldi. It's written by Detective Sergeant Ryan.

11 THE COURT: I will permit it only with  
12 respect to refreshing his recollection. Let me finish,  
13 Mr. Biancavilla. You can refresh your recollection  
14 with a piece of paper, with a bologna sandwich, with  
15 anything. If it doesn't refresh his recollection,  
16 that's fine.

17 MR. BIANCAVILLA: But that is not the  
18 question he asked.

19 THE COURT: What was the question, Mr.  
20 Chamberlain?

21 MR. CHAMBERLAIN: You can read it back but  
22 that was the question I thought I asked.

23 THE COURT: Let me ask the court reporter to  
24 read it back to me.

25 (Whereupon, the record was read back.)

1 MR. BIANCAVILLA: I'm going to still maintain  
2 my objection for the following reasons: First of all,  
3 what the FBI was told on a prior occasion is an  
4 improper question. If that refreshes his recollection  
5 as to what he told the FBI, that I understand.

6 THE COURT: That's correct.

7 MR. BIANCAVILLA: Does that refresh your  
8 recollection as to what the FBI was told by the man on  
9 the moon?

10 THE COURT: If you're more specific, Mr.  
11 Chamberlain, I will permit you to refresh his  
12 recollection but it has to do with whether or not it  
13 refreshes his recollection.

14 MR. BIANCAVILLA: As to something he told  
15 them.

16 THE COURT: As we know, that letter is signed  
17 by Detective Sergeant Ryan, who is not --

18 MR. CHAMBERLAIN: I know that, but it could  
19 refresh his recollection.

20 THE COURT: As to what he told, yes, ask that  
21 question.

22 MR. BIANCAVILLA: My objection was that  
23 wasn't what his question was.

24 THE COURT: I will sustain the objection with  
25 respect to the question but I will allow Mr.

1 Chamberlain to rephrase the question when we come back  
2 from lunch. Anything else, Counsel?

3 MR. BIANCAVILLA: Not from me, Judge.

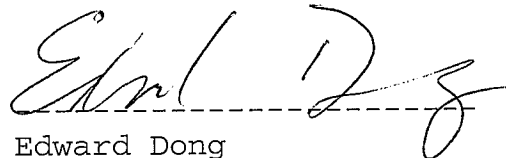
4 THE COURT: Mr. Chamberlain? 2 o'clock. I'm  
5 sorry, 2:30, Counsel.

6 (Luncheon recess.)

7 \* \* \*

8 C E R T I F I C A T I O N

9  
10 I hereby certify the within to be a true and accurate  
11 transcription of my stenographic notes in the above  
12 proceeding.

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15 Edward Dong

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